

IN THE
District Court of the United States,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
PETITIONER,

vs.

MOTION PICTURE PATENTS COM-
PANY et al., DEFENDANTS.

RECORD---VOLUME III.

TESTIMONY OF WITNESSES FOR THE
DEFENDANTS.

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UNITED STATES OF AMERICA

v.

MOTION PICTURE PATENTS CO. ET AL.

RECORD—VOLUME III.

TESTIMONY OF WITNESSES FOR THE DEFENDANTS

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Volume III.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, Petitioner,	}	No. 889.	2
v.			
MOTION PICTURE PATENTS CO. and others, Defendants.		Sept. Sess., 1912.	

NEW YORK CITY, October 1st, 1913.

The hearing was adjourned pursuant to request of defendants' counsel to October 15th, 1913, at the Hotel Manhattan.

NEW YORK CITY, October 15, 1913.

3

The hearings were resumed, pursuant to adjournment, at 10:30 o'clock A. M., on the 15th day of October, 1913, at the Hotel Manhattan, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

Messrs. J. H. CALDWELL, and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

- 1 Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig. Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Defendants' Evidence.

The defendants then introduced the following evidence.

- 2 Thereupon, H. N. MARVIN, the first witness, subpoenaed by defendants, of lawful age, being first duly sworn, deposed:

Direct examination by Mr. KINGSLEY:

Q. Had you been interested in the motion picture art prior to 1908, Mr. Marvin? A. I had.

Q. And for how long a time prior to that year? A. Since 1894.

- 3 Q. Had you been interested in the motion picture art from the time of its origin? A. Substantially.

Q. What was the condition of the motion picture art prior to the Edison license arrangement in 1908? A. By prior to that time I assume that you mean a short period immediately prior to that?

Q. Yes, some few months prior to that time.

Mr. GROSVENOR: I object to the question as being too general, and furthermore, if it is directed to the economic, or industrial conditions of the trade, it is immaterial and irrelevant.

- 4 The Witness: There were a number of persons or concerns who were engaged in the occupation of producing motion pictures in this country, and a number who were engaged in importing these motion pictures. There were a number of concerns who were engaged in the business of distributing such motion pictures to exhibitors, and there were a number of persons who were engaged in the occupation of exhibiting these motion pictures in public places of amusement. The business was carried on in an irregular

style, owing to very considerable fluctuations in the supply. There was a tremendous amount of litigation—almost everyone who was permanently engaged in the occupation of producing motion pictures, and some who were importing, were being sued under various patents that were owned by different owners, which patents covered different elements in the apparatus employed in the production and exhibition of motion pictures. This continual fighting in the Courts, with the uncertainties attending it, acted to deter producers from increasing and regulating their output. It kept the renters or distributors of motion pictures in a continual uncertainty, because they were unable to tell from day to day what their sources of supply would be. It deterred exhibitors from increasing their investments in theatres, and it deterred others from going into the business of operating theatres, because of the uncertainties attendant upon the sources of supply of motion pictures. The owners of the several patents were repeatedly warning the public that their patents were about to be sustained, and that they were about to prevent some persons from continuing in the occupation, and the general result was rather chaotic, and the conditions were very discouraging to the advancement of the art.

By Mr. KINGSLEY:

Q. Were you at that time connected with the Biograph Company? A. I was.

Q. In what capacity were you connected with that company? A. I was Vice-President.

Q. Were you familiar with the business of the Biograph Company? A. Yes, I was.

Q. At that time did you, as a producer of motion pictures, consider it safe to make large investments under the conditions then existing? A. I did not.

Mr. GROSVENOR: It is understood that my objection, made at the beginning of this line of questioning, applies to all questions along this line, so that I will not have to repeat it, on the ground that it is going into the economic conditions, and not anything that is directly material to any of the issues in this case.

1 The Witness: We were very uncertain as to our ability to continue in the production and distribution of motion pictures because of the patent litigation.

Q. Was there much litigation in the business at that time? A. There was a great deal of litigation at that time, and there had been continuous litigation from about 1896.

2 Q. And was the Biograph Company involved in some of this litigation? A. It was involved in this litigation. It was the defendant in suits brought by the Edison Company under patents that were alleged to cover essential elements in the production of motion pictures, notably, the motion picture camera, and the motion picture film. It was also sued by the Armat Company for the use of exhibiting machines under patents that purported to cover essential elements in the exhibiting machine. It had been repeatedly threatened with suits under the Latham patents which purported to cover essential elements in the projecting machines.

3 Q. Were you familiar with conditions in the business at the time of the organization of the Patents Company, and the acceptance of licenses by the various producers of motion pictures? A. I was.

4 Q. What was the effect upon the business of the producers of motion pictures of the organization of the Patents Company, and the acceptance of licenses by the producers of motion pictures, rental exchanges, and exhibitors? A. Well, the producers of motion pictures, after they had obtained licenses from all of the dominant patents in the art, felt that they had no further ground for apprehension on the score of legal prosecutions. They believed that all of the unrest and turmoil incident to the patent litigation was ended, and that they could then devote their entire energies to the production of motion picture dramas, and the distribution of the films containing reproductions of the dramas, and the result was that they immediately began to increase their investments in plants and facilities for the production of these dramas; they increased their employment of artist-talent; they commenced to increase the number of dramas that they issued weekly or monthly, and in every way began to extend that occupation. Did your question refer solely to producers?

Q. It also referred to rental exchanges and exhibitors?

A. The rental exchanges felt that they were then in a more secure position because they realized that they then had a dependable source of supply, that they could confidently anticipate that each licensed concern would continue to produce and lease to them a supply of films with regularity and certainty. The exhibitors throughout the country, shared this feeling of confidence, since they realized that the source of supply of the dramas that they desired to use in their theatres was now assured. As a result, in very many instances, they commenced to enlarge their places of exhibition—they built new theatres, more costly and convenient than the former ones, and many people on the outside engaged in other occupations, turned their attention to this dramatic field, and erected theatres, and started to exhibit motion pictures, and generally the result was a very immediate and extensive expansion of the entire art.

Q. Has that expansion been steady and continuous since that time? A. It has.

Q. Is it still going on? A. It is.

Q. At the time of the organization of the Motion Picture Patents Company, and prior thereto, did you have occasion to know whether producers of motion pictures were exporting any considerable quantity? A. I was familiar with the general exporting conditions, and I know that no very considerable quantity of motion pictures was being exported at that time by anyone.

Q. Have you kept in touch with the motion picture art since 1908? A. I have.

Q. Have you noticed any change in this condition relative to exportation of motion pictures? A. I know that the exportation has steadily increased since the time of the organization of the Motion Picture Patents Company, until at the present time a very large portion of the motion picture films produced in the country are exported.

Q. Then your testimony is, there has been marked increase in the foreign business so far as exporting motion pictures is concerned? A. A very marked increase.

Q. Are you able to say whether there has been any change in the character of the product since early in 1908 up to the present time, and by that I mean the character of the motion pictures in respect to topics, and in respect to artistic excellence? A. Well, it is a matter of perfectly general knowledge that there has been an enormous ad-

- 1 vance in the motion picture dramatic art since 1908. The character of the artists employed has advanced immensely. At that time a very few, if any, actors or actresses of note were engaged in the motion picture dramas, while at the present time, many of the most noted artists of the world devote a portion, or all of their time, to the motion picture art. The facilities for these dramatic productions have been enormously advanced. Immense sums have been expended in the erection of studios suitable for the production of these dramas, which in
- 2 many instances have been equipped with enormous and costly electric lighting plants, for artificial illumination, so that these dramas may be produced at any time of day or night, independently of the weather. Many concerns engaged in this art have studios maintained in different parts of the country, thousands of miles apart. They maintain quite a large number of distinct, separate troupes of artists, several companies that are constantly engaged in the production of these dramas, and very considerable sums are now expended for scenarios, or books that are dramatizations of stories, whereas, in 1908, no
- 3 considerable sums were usually paid for these scenarios. Now, many of the most popular authors of the day are engaged at a very large expense to produce these scenarios. In the matter of places of exhibition, very costly theatres are now being erected and devoted exclusively to the motion picture drama, whereas, in 1908, these exhibitions were mainly confined to small "store shows," as they were then called, which were places fitted up in rooms, originally occupied for commercial stores. These rooms would be equipped with seats or benches, and a screen at one end, and darkened, and would hold a few hundred people—
- 4 whereas, now, some of the most costly and beautiful theatres in the country are devoted entirely to motion picture exhibitions. Prices of admission have been gradually advanced. Whereas, in 1908, the popular common price of admission to the store shows was a nickel, now the high class theatres, that are finely equipped, and providing exceptionally fine motion picture shows, are able to get prices as high as one dollar and a dollar and a half.

Q. Will you tell us, Mr. Marvin, what is meant by a "scenario," by the producers of motion pictures? A. A

scenario is a skeleton, or outlined story of a drama arranged suitably for production in motion pictures. 1

Q. As I understand it, a scenario does not differ essentially from an ordinary play so far as it exhibits the results? A. I should say that about the only difference between a scenario and an ordinary play is that a play contains lines that are to be spoken by the actors, whereas the motion picture scenario does not contain lines to be spoken by actors. It is necessary to arrange the story so as to produce it in pantomime in such a way that the story is told by the actors without the use of words. 2

Q. Isn't it true, as a matter of fact, that when actors give a play before a camera for the purpose of producing a motion picture that they do speak the lines to a large extent, not necessarily lines in the scenario, but do express themselves—verbally? A. That is quite customary to facilitate facial expression, and to enable the actors to produce pantomime more naturally, particularly in the cases of actors who have been accustomed to speak lines rather than to do pantomime work. 3

Q. Are you familiar with the conditions of the license agreement entered into between the Motion Picture Patents Company and the producers of motion pictures, on or about December 18th, 1908? A. I am. 3

Q. Why does the license to produce motion pictures specify that subjects on films of more than one inch must be leased, while motion pictures on film of less than one inch, may be sold? 4

Mr. GROSVENOR: In answering that question I suppose the witness refers to the reasons and purposes that the framers of the license had in mind at the time it was adopted. 4

The Witness: There were several reasons that influenced the framers of the license agreement in introducing that provision. The owners of the patents involved in that agreement realized that the permanency and magnitude of their revenues would be derived from the exercise of the motion picture dramatic art through the medium of the appliances covered by their patents, and depended on the popularity of the motion picture drama, and upon its continued popularity with the public, who were the ones from

- 1 whom ultimately all of the revenues must come. They realized that if the instrumentalities employed in the production of these motion picture dramas were imperfect, that the exhibitions would be imperfect, and that the public would not be favorably impressed with them, and that they would not be attracted to these shows, but rather possibly repelled. They felt, therefore, that it would be unsafe, so far as their own interests were concerned, and so far as the interests of the public were concerned, to have these film records of the drama go out into the hands
- 2 of entirely irresponsible people throughout the country who might misuse them by exhibiting them after they became unfit for exhibition. It was felt, therefore, that the vehicles of these dramas must be conserved, and must be protected, and that the interest in the drama itself depended largely upon how the drama was produced, an inferior production, or representation of it, destroying the merit of the drama itself. Therefore, it was concluded that it would be necessary to lease those mediums through which the drama was to be exhibited and not to sell them, as that was the only way in which these exhibitions could
- 3 be maintained in proper condition, but all of these motion picture strips that were used for public exhibitions of dramas were of an inch or more in width. It was not considered probable that the narrower film would be so used; it was expected that the use of the narrow film would be confined to private exhibitions in homes. Therefore, it was decided to lease only the wider film, while the narrow film was permitted to be sold outright. It was realized that no matter what contracts might be entered into with anyone for the exhibition of these dramas, or what licenses might be granted, unless the ownership of these picture strips
- 4 that contained drama records remained with the producer of the drama, there would be no effective way of carrying out any such contracts or licenses. The only way in which such contract, license, or agreement, could be made effective would be by retention of the ownership of the motion picture strip, which could be followed anywhere; whereas, if these strips were scattered around the country in the ownership of many irresponsible people, it would be an endless and impossible task to follow them up, and insure the carrying out of the agreements under which they might have been supplied.

Q. Why was the license made personal to the licensee? 1

A. As I stated in my answer to the previous question, the owners of the patents regarded their revenues as dependent upon the manner in which this dramatic art was exercised throughout the country; they realized that it was a new thing; that it was on trial before the public. They realized that in the matter of amusement and entertainment the public is fickle. They realized, therefore, that imperfect and inferior representations of the art would estrange the public, whereas fine, high-class exhibitions would attract the public, would win them, would attract them into the theatres, and cause them to pay large sums of money for their entertainment, a portion of which would find its way eventually to the owners of the patents. They, therefore, regarded it of supreme importance that the people who were licensed under these patents to promote this art should be selected with the greatest care; that they should, wherever possible, be men of experience, men who had demonstrated by their past work their ability and their intention to produce motion picture dramas of the attractive sort, and of a high character. Therefore, great care was exercised in selecting these licensees, but all of that care would have been fruitless, and the entire scheme would have been defeated, if these licenses had been transferable at the will of the licensees, because, voluntarily or involuntarily, as time went on, these licenses might have been assigned from one person to another, and thus the whole purpose of the original selection might have been wiped out. 2 3

Q. Why was it stipulated that all pictures made by the licensees must be on film selected and designated by the Patents Company? A. At that time there were several sources of supply of the raw stock on which motion picture photographs were printed, but one of these sources of supply was very considerably superior to the others. And it was noted that motion pictures photographed on motion picture film supplied from this particular source were much better, were more durable, and the photographic qualities were better; therefore, the dramatic representations were superior. And, carrying out its policy of seeking to advance its interests by advancing the quality of the art, the owners of the patents thought it wise to insist that the motion pictures used in the presentation of these dramas should be made from the best obtainable stock, and therefore they in- 4

1 sisted upon the right to name the source of supply of that stock

Q. This was finally done, was it not? A. This was done.

Q. What source of supply was selected? A. The Eastman Kodak Company of Rochester was the source of supply selected for the stock.

Q. Is that condition still in effect? By that I mean the condition of stipulating that all pictures made by the licensees must be on film selected and designated by the Patents Company? A. No. That condition is no longer in existence.

2 Q. Do you recall when it was abrogated? A. I believe that condition was abrogated on or about the 20th of June, 1912.

Q. Why did the Patents Company agree with the licensed producers of motion pictures to obligate the manufacturer of licensed film not to furnish or sell such film in the territory covered, to any but the licensees, except to the extent of two and a half per cent.? A. Well, any film supplied to anyone other than the licensees, would obviously be supplied for the purpose of being put into infringing use, and since the owners of the patents had agreed with the licensees that the number
3 of licenses issued by the owners of the patents should be limited, that was merely a means, a precautionary means for carrying out that provision. Furthermore, the owners of the patents were obliged by these license agreements to bring suits against infringers under certain of these patents, at the request of the licensees. It was realized, however, that a certain amount, say, two and a half per cent.—that was the percentage finally fixed upon, I believe—of this film, might be advantageously used by scientists and experimenters whose work might tend to develop and advance the art, and to stimulate a certain interest on the part of some of the
4 public in the motion picture art. It was therefore deemed advisable to permit a certain quantity of raw stock to be supplied for that purpose.

Q. And along this same line, I will ask you why were the manufacturers of licensed film restricted to supplying independent producers of moving pictures with film one inch in width? A. Well, it was considered that film not wider than one inch could not be used commercially for exhibition of motion picture dramas; that is, in public theatres and halls; that the use of such film would be confined to amateurs and

to homes and private entertainment, and it was thought that the interests of the owners of the patents might be advanced more by permitting such use indiscriminately than by attempting to restrict it, because such use, private use, on the part of individuals, might more or less stimulate interest in these public exhibitions upon which the owners of the patents relied for appreciable revenues.

Q. At that time was there, and is there now, such a thing as a standard sized motion picture? A. Oh, yes; there has been from the beginning a standard sized motion picture strip. The size of that strip has not been varied at all since the strip was originally put out by Edison, along in 1891 or 1892, I think. That has been adopted all over the world and used.

Q. What is the width of that strip, approximately? A. That is approximately one and three-eighths inches wide, with a picture-bearing surface of about an inch.

Q. Was there a flat scale of royalties upon the film purchased by the producers of motion pictures? A. Well, the royalty schedule, or scale, paid by the producers to the Patents Company was a variable one, dependent upon the quantity of motion pictures produced per year. This was uniform for all of the producers.

Q. Then the royalties varied with the amount of film that the producer purchased? A. Yes.

Q. Why was a graduated scale of royalties fixed upon film? A. Well, that was one of the means that was taken to insure active competition between the several licensees. A licensee that produced a larger quantity of motion pictures, and therefore, motion pictures presumably of superior quality, would be compelled to pay less royalty per foot.

Q. Why was the royalty from the makers of motion pictures collected by the manufacturer of licensed film in the first instance? A. Well, all of these licensees at that time were more or less jealous of each other, and they were at great pains to conceal the details of their business from each other. The owners of the Motion Picture Patents Company were themselves producers of motion pictures. It was thought if this royalty was paid direct by the licensee to the Motion Picture Patents Company, the Motion Picture Patents Company would thereby of necessity know of the extent of the business of each licensee. That was considered to be objectionable by the licensees, and there-

1 fore, the framers of the license agreed upon the expedient of having these royalties collected by the manufacturer who supplied the raw stock, and transmitted to the Motion Picture Patents Company in bulk, subject, of course, to the scrutiny of chartered accountants.

Q. What was the purpose in stipulating that worn motion pictures must be cut or defaced by the licensee before selling them as refuse? A. Well, worn motion pictures returned to producers were so returned because they were considered to be unfit for proper representations of motion picture dramas, and to avoid the possibility of those picture strips being again put into public use by any unscrupulous person who might obtain possession of them in any manner whatever, it was provided that they should be utterly defaced and practically destroyed before they went out of the possession of the original producer.

Q. Why were the licensees restricted from selling or leasing to anyone handling motion pictures not the output of one of the licensees? A. Well, anyone handling motion pictures containing the inventions of the Edison Reissue Patent, who was not one of the licensees, would, of necessity, be an infringer, and if the licensees were to supply motion pictures to such an infringer, they would be aiding and abetting an infringer of the very patents under which they were licensees.

Q. Was it provided in the license agreement with the producers of motion pictures that the boxes containing licensed motion pictures sent out by the said licensees, should contain a label pursuant to the stipulations of the license? A. It was.

Q. Do you recall what this label provided with reference to the selling or leasing? A. Well, this label provided that the motion picture strips contained therein should not be sold, but could only be used or leased.

MR. GROSVENOR: I object to that answer as stating the contents of a notice; furthermore, the answer is not an accurate and complete statement of what the notice did contain.

By Mr. KINGSLEY:

Q. Do you recall what this label provided with refer-

ence to projecting machines? I don't mean that you should state that in terms but in general. A. Well, this label provided that the films should only be used or leased for use on motion picture projecting machines licensed by the licensor. 1

Q. Do you recall what this label provided with reference to the sub-rental prices? A. There was a provision in the label that the sub-rental prices should not be less than the prices that might be fixed and determined by the licensor.

Q. Do you recall what this label provided with reference to dupes? A. The label provided that the motion pictures should not be duped, that is to say, photographically copied. 2

Q. Did you define a dupe on your direct examination in January? A. I don't recall whether I did or not.

Q. Well, then, will you do it now? A. Well, a dupe, as it is known in the art, is a secondary photographic copy of a motion picture strip. It is obtained, usually, by photographing the motion picture strip, making a negative, and then making a positive copy from that secondary negative. That is what is known as a dupe. 3

MR. GROSVENOR: Is the word "dupe" a short abbreviation of "duplicate," or does it stand for the word meaning deception?

The Witness: Well, I am sure I don't know, Mr. Grosvenor, but I am inclined to think that it is probably an abbreviation of duplicate. I think that is probably the way the word grew up.

By Mr. KINGSLEY: 4

Q. But duping, itself, represents an act of piracy, does it not? A. It does.

Q. An act akin to literary piracy, where the manuscript of an author is duplicated or stolen? A. Yes. Unless it is done with the consent of the original producers and owners of the motion pictures.

Q. But in the ordinary acceptance of the term as used in the art, it represents an act of piracy? A. Yes. It is used to make piratical copies, ordinarily.

1 Q. Do you recall what this label provided with reference to trademarks? A. It provided that the trademark of the producer should not be removed.

Q. Did most of the producers use trademarks, or don't you know that? A. I believe they did.

Q. Do you recall what this label provided with reference to the possession of the motion picture upon violation of any of the foregoing conditions? A. The notice provided that in case of violation of any of the foregoing conditions, the right of possession of the moving picture should revert to the original owner.

2 Q. Did the licensor stipulate, in fact, with the licensee, any fixed sub-rental price at any time? A. Never. That provision was always a dead letter; never exercised.

Q. It was in the license agreement, but was never used? A. No. It was never used. It was in there, but it was never used.

Q. Was there a provision in the license agreement with respect to duping? A. Yes.

3 Q. And what was the purport of that? A. Well, it was provided that dupes should not be made by the licensee, or issued.

Q. Did you regard this as a necessary and desirable condition? A. Yes. This we regarded as a very necessary provision, because there had been a good deal of this duping practiced prior to the organization of the Patents Company, and it was most demoralizing. No producer could feel safe in expending any considerable sum of money in getting up motion picture dramas, if any of his competitors might dupe his films as soon as they were issued, and supply copies themselves.

4 Q. How did the scale of minimum prices fixed by the license agreement between the Patents Company and the producers of motion pictures, compare with the prices that prevailed during the life of the Edison agreement? A. The scale of prices adopted by the license agreement was not materially different from the prices then prevailing for motion pictures in this country. The minimum prices established in the license agreement were slightly lower than the prices at which the Biograph Company, George Kleine, and some others, had been supplying motion pictures, and they were slightly higher than the prices at which the

Edison Company and some of its licensees had temporarily supplied films, but not materially different. 1

Q. During the time of the Edison license agreement, the Biograph Company, and George Kleine on one side, and the Edison Company and its licensees on the other side, were competing, were they not? A. Yes.

Q. Did the Biograph Company cut its prices during that period? A. Never.

Q. What provision was contained in the license agreement between the Motion Picture Patents Company and the licensed producers of motion pictures, relative to alterations in the price scale? A. Well, the price scale was originally fixed as representing a reasonable price at which it was possible to supply motion picture films under the conditions that existed, and this was reached or agreed upon after consultation with the licensees, and in view of the business conditions as they found them, and it was considered reasonable and right that if those conditions should materially change in the future, there should be some provision by which these changed business conditions could be reflected in the price scale. Therefore it was provided that the scale might be changed from time to time according to the opinions of the majority of the licensees. 2 3

Q. And how were the licensees to indicate their opinion? A. They were to indicate their views upon the matter by voting, on a basis of the quantity of motion pictures that had been issued by them during the previous year.

Q. What is meant by running feet of new subjects? A. By that expression is meant the number of running feet in a positive print, or copy of a negative subject; that is, that indicates approximately the length of the negative, and is independent of the aggregate number of feet of copies that may be made from that negative. 4

Q. When the Patents Company granted licenses for projecting machines, what proportion of machines in the market were licensed? A. Well, it licensed substantially all of the machines that were then in the market. There might have been possibly one or two that were not licensed, but they were too insignificant to consider. Possibly five per cent. or less.

Q. You would say, at least ninety-five per cent. of the models of projecting machines on the market were licensed? A. I should say so, yes.

1 Q. And this, I take it, embraced practically all of the good models on the market? A. Yes.

Q. This was in 1909? A. Yes, at the time the licenses were first granted.

2 Q. In referring to the clause in the license agreement between the Motion Picture Patents Company and the licensed producers of motion pictures, which provided how the producers of motion pictures might change the prices, you made some reference to the fact that the owners of the Patents Company were themselves producers. Just what did you mean by that? A. I meant by that that the stock of the Motion Picture Patents Company is owned by the Biograph Company and by the Edison Company. The Biograph Company and the Edison Company are producers of motion pictures.

Q. And by that you mean that they were necessarily competitors of the other licensees? A. Necessarily competitors of the other licensees, yes.

3 Q. And that this provision in the license agreement was in a sense a measure of protection to the other licensees, and which they insisted upon? A. Yes. I understand that that question originally referred to the matter of collection of royalties, which it was desired to keep secret on account of the desirability of keeping the business secrets of the licensees inviolate, and these licensees naturally objected to having the Edison Company and the Biograph Company acquainted with the magnitude of their business.

4 Q. What did the license to producers of motion pictures contain, relative to the use of cameras and projecting machines? A. The license contained a provision that the licensee might make and use as many cameras as he desired for his own business under the patents that were owned by the Patents Company. He was not, however, restricted to the use of such cameras, and he was permitted to manufacture motion picture films, films of a certain width, for use in the United States, to be leased, and film of any width to be sold for export, and film of a narrower width to be sold for use in the United States.

Q. What price stipulation was made with respect to standing orders? A. It was provided that the standing order price should be somewhat less than the price for individual films which might be leased from time to time. This was a reasonable provision, and was put in because it was cheaper

for the manufacturer to print up all of the copies from the negative that he was going to dispose of, at one time, than it was to print copies at separate times, and there was a certain advantage to the manufacturer in being able to rely upon his market, and to know in advance approximately how many copies of a certain subject he would lease. That facilitated the operation of his factory where the prints were made.

Q. What is a standing order? A. A standing order is an order for one or more copies of each subject or drama produced and issued by a producer.

Q. Why was a provision incorporated in the license agreement against re-importation? A. Well, that was necessary because film was permitted to be sold abroad, and if that film should be re-imported into this country there would be no way of preventing its being used in violation of the terms and conditions under which the films were leased for use in this country.

Q. Why was a provision inserted in the license agreement against disposing of motion pictures as premiums or prizes? A. Well, such a use of motion pictures might be unfairly made by a licensee, to induce the lease of his film for some reason other than on account of the merit of the production itself, and it was desired to foster as great competition on the basis of merit alone as was possible.

Q. What explanation do you wish to make regarding the provision in the license agreement that the licensee must lease subject to the condition that the title must remain in him, and the pictures shall not be shown in any but licensed projecting machines? A. Well, that was really a necessary condition, particularly the condition that the motion pictures should be only exhibited in licensed projecting machines. That was a condition the necessity for which arose out of the fact that these several patents were in the hands of a single owner. Once you place these supplementary patents in the hands of a single owner, it becomes impossible for that owner to grant a license under one of these patents, without restricting that license with reference to its use under the other patents, unless the owner is prepared to abandon one of the patents, and to abandon any revenue that he might otherwise derive from that patent. Because if in this present case the licensor should grant a license under this patent on film the one who took that license on the film, un-

1 der that license, must thereby acquire, by implication, auto-
matically, a license under the projecting machine patent,
because the only use that can be made of film is to exhibit it
in a projecting machine. And the only real projecting ma-
chine available in which that film could be used was the pro-
jecting machine covered by the patents owned by the li-
censor, the Patents Company. Of what use would it be to a
man to take a license to make film if he could not use the
film? Its only function was to be used in connection,
and also, you may say, as an element of a project-
ing machine. But the projecting machine, and the only
2 projecting machine available to that man, was the projecting
machine covered by the other patents of the Patents Com-
pany. So that if the Patents Company should have at-
tempted to license a man, and he paid money to the Patents
Company for that license under the film patent, he would
have gotten nothing for his money, unless he could use that
film in a projecting machine covered by the patents owned by
the Patents Company. And in that case, the Patents Com-
pany, if it had granted such a license, would have estopped
itself, apparently, from any revenue under the projecting
3 machine patent, and, conversely, if the Patents Company
sold a projecting machine, or licensed someone else to sell
its projecting machine, and a man bought one of those pro-
jecting machines in good faith, and paid his money for it,
he would be entitled to use it in the only way in which
a projecting machine can be used, that is, for the exhibition
of film. He would not want to use that projecting machine
for an ornament, he would not want to use it for a sewing
machine; he bought it apparently for use—

4 Mr. GROSVENOR: I object to all of this answer
as being argumentative.

The Witness: I am merely trying to explain why that
provision was put in. I wanted to say that the purchaser
of that projecting machine, who bought it in good faith, and
paid his money for it, from a licensed manufacturer, we
thought would have the right to use that machine. He must
use it with film, and if he used it with film, it would have to
be with the patented film of the Patents Company, because
there was no other film, and the Patents Company knew
there was no other film, and the purchaser would know there

was no other film. Therefore, in order to protect those several patents and insure a revenue under each of them, and not to abandon either of them to the public, it was necessary that any license granted under either should have interlocking restrictions and conditions which applied to the other patent covering the other part of the essential apparatus for the production of these motion picture dramas.

Mr. GROSVENOR: What patents are you referring to when you use the words "either patent"?

The Witness: I am referring to the film patent on the one side, and I am referring to, for example, the Latham patent on the other side.

By Mr. KINGSLEY:

Q. Had it been found desirable and necessary to have a stipulation that the licensee should insist upon the return of an equivalent amount of film the seventh month after the film was shipped? A. It had been found, as a matter of fact, that after film had been in general use for about six months it usually became unfit for further use, and that if it was used after it was thus worn by exhibitions, that the dramatic representations were very much inferior, the film had become scratched, had become torn, usually pieces of it would be torn out, thus making serious breaks in the continuity of the drama, the emulsion would be scraped off in spots, causing bright flashes on the screen, which were painful to the eye, and therefore it was found necessary, in order to maintain a reasonable quality to the public presentations of these dramas, that such worn film should be returned to the makers of the film and destroyed, and not again used for public exhibitions.

Q. Why was the licensed producer of motion pictures prevented from giving exhibitions of standard motion pictures for profit? A. It was feared that if the producers of motion pictures should get to exhibiting them publicly, that that would deter others from making considerable investments in theatres, and going extensively into the business, because of the apprehension they might feel that if the producers themselves should start in that line of business, that they would be put to serious disadvantage,

1 and since it was desirable to extend the investments in
theatres devoted to motion picture dramas as much as
possible, it was considered wise to restrict the producers
so that they should not themselves give public exhibitions
for hire.

2 Q. At the risk of some possible repetition, I want to ask
you this question: What purpose was in view when it
was stipulated in the license agreement between the Mo-
tion Picture Patents Company and the licensed producers of
motion pictures, that a producing licensee should not
knowingly allow motion pictures of standard width made
3 by it, to be shown in unlicensed projecting machines? A.
Well, the user of an unlicensed projecting machine would
be an infringer of the patents of the licensor, and anyone
who supplied motion pictures knowingly for use in such
a machine, would be a contributory infringer, and it was
thought proper to obligate the licensees not to be contribu-
tory infringers with others who might be infringing the
patents of the licensor.

Q. Was there an agreement on the part of the Patents
Company to institute suits against infringers upon request
3 of a majority of the licensed producers of motion pictures?
A. There was.

Q. Was there any special fund for that purpose? A.
No. There was no fund for that purpose. It was not an-
ticipated that there would be any material litigation of
that character.

Q. Was it ever intended to raise a gigantic fund for
litigation, as stated by the witness Lodge? A. Why, no.
There was never any thought of any such thing. It was
expected that the organization of the Motion Picture Pat-
ents Company would practically put an end to the litiga-
4 tions under the patents. It was never anticipated that any
considerable infringement of these patents would thereafter
be attempted.

Q. Was such a fund ever raised or maintained? A. It
never was.

Q. Were the licensed producers of motion pictures
treated equally and alike with respect to the terms of the
several agreements? A. Yes. The agreements were sub-
stantially identical. There were some slight modifications
that were incident to the conditions, but they were prac-
tically immaterial.

Q. Then one was not favored over another in regard to material phases of the agreement? A. No, there was no material favoritism. The only provision of that nature that I can recall was the provision that the Edison Company, the original owners of the film patent, should not pay royalty under the film patent. 1

Q. With respect to the leasing provision embodied in the license to producers of motion pictures, how did it differ from a similar clause in the Edison license agreement? A. Well, it differed practically in form only. Under the Edison license agreement, while the term "sale" was used, I believe, in connection with the disposition of motion pictures, yet there was a provision that motion pictures should be returned after six months to the manufacturer, which provision operated to characterize the so-called sale as a virtual lease, since after a period, the purchaser of the motion picture must return it to the Edison Company, and, obviously, in the meantime, he could not re-sell it. 2

Q. Were you familiar with the license agreement between the Motion Picture Patents Company and the rental exchanges, entered into in 1909? A. Yes. 3

Q. Do you recall whether in the rental exchange license, there was any reference to the provision in the Edison license agreement relative to the return of motion picture films to the several licensed producers and importers? A. Yes. The rental agreement entered into by the Motion Picture Patents Company with the rental exchanges provided that the existing agreements between the rental exchanges and the Edison Company should be abrogated, with the exception of the provisions in those former agreements relative to the return of film to the manufacturers. It provided that that provision of the earlier agreements should not be abrogated by the license agreements then being made, but should be retained in force. 4

Q. In other words, the Edison license agreement was abrogated, except as to any clause in said agreement relating to the return of motion picture film to the several licensed manufacturers or importers? A. That is right.

Q. I think you have already testified that the license given to rental exchanges was a personal license. A. Well, it was, whether I testified or not.

1 Q. Did you say whether it was transferable or not?
A. It was not transferable.

Q. Were the rental exchanges treated alike with regard to prices of motion pictures? A. Yes.

Q. So far as you know, there was no discrimination?
A. There was no discrimination.

2 Q. What advantages would an exchange derive from maintaining a standing order? A. Well, an exchange, in the first place, would get the advantage of a lower price. In the second place, they would know just what their supply of film was going to be, and they would be able to make contracts with their exhibitors to supply certain makes of films on certain days.

3 Q. What did the rental exchange license provide, relative to projecting machines? A. Well, it provided that the rental exchange should only sub-lease these motion pictures upon projecting machines that were licensed by the licensor. The object of that was to prevent the licensed exchange from being a contributory infringer of the projecting machine patents by supplying motion pictures to persons who were infringing the projecting machine patents by using projecting machines without a license.

4 Q. Was there a clause in the exchange agreement relative to the amount of motion pictures that an exchange should rent in a month? A. Yes. There was a requirement that the exchange should lease not less than \$2,500 worth of motion pictures each month. The purpose of that clause was to insure a fairly adequate supply of motion pictures to the exchange, so that it could supply proper service to an exhibitor. Prior to the organization of the Patents Company, there had been in existence a number of exchanges that were popularly known as "junk" exchanges. Exchanges that pretended to buy a considerable amount of new film each week, but as a matter of fact, did not buy any, or scarcely any, and an exhibitor had no means of knowing, when he went to an exchange, whether that exchange was really buying, or leasing, a sufficient quantity of film to give him good service or not. And it was thought that an exchange that did not do business sufficient to justify it in leasing a sufficient quantity of motion pictures, had better not be licensed.

Q. There was a provision in the rental exchange license

permitting the cancellation of the license upon fourteen days' notice. Are you familiar with that? A. Yes.

Q. Will you tell us what was the purpose of the fourteen day cancellation clause? A. When the Patents Company was organized and these exchange licenses were prepared and granted to exchanges, there were a great many exchanges scattered all over the country, and they were of a great variety of standing. Some were known to be good, and some were known to be bad, financially and in every other way, and, of course, these exchanges were the necessary mediums through which the motion pictures of the producers reached the exhibitors. It was necessary, therefore, that these exchanges should be licensed all over the country in order to provide an adequate and regular supply of motion pictures to the licensed exhibitors over the country. It was impossible immediately, to go into any very extensive investigation of the personnel of these exchanges, their methods of doing business, their financial responsibility, their integrity, their morality, or the way in which they had been in the habit of supplying their customers. The best that could be done at that time was to take the general consensus of opinion of those who might be in position to know, and select in that way, a fairly representative body of men who should represent the owners of the patents, to the extent of being their duly appointed licensees to supply these motion pictures to the licensed exhibitors. Well, now, it was realized right at that time, that probably in granting those licenses, many mistakes would be made. It was thought probable that some who would be licensed would subsequently be found to be undesirable. That they would be, perhaps, of inferior commercial standing, or that they might not have the desire to observe the conditions of the license carefully, and might not so observe them. Or, they might be careless, they might be shiftless in their methods of doing business in a thousand and one ways that might defeat the owners of the patents in providing a regular, faithful, and adequate supply of motion pictures to the licensed exhibitors. And, at the same time, it was known that many of them were shrewd, and they were not only shrewd in doing business faithfully, but they were sometimes equally shrewd in covering up transactions that were not straight, and it was realized that it might be a matter of great

- 1 difficulty to obtain the legal proof of certain doings that
they might practice, certain things which might amount to
violations of the license, certain things which might be-
come apparent they were doing, which, if it were known
they were doing before the license was granted, the license
never would be granted. And the Patents Company saw no
reason—the owners of the patent—why it should tie its
own hands in the selection of these representatives, burden
itself with the necessity of going into strict legal proof of
the formal delinquency of the licensee, if it should be-
2 come satisfied from the general aspect of things, from popu-
lar report, from the statements, although unverified, per-
haps, of exhibitors, and others, that the exchange was not
a desirable licensee from the standpoint of the owners of the
patents. And, therefore, the Patents Company when it
gave these licenses, which it granted without considera-
tion, retained the right to terminate these licenses with-
out cause on its own judgment alone, on fourteen days'
notice. And it refused to grant a license to any exchange
except upon that well understood, perfectly recognized
condition, that this license was to some extent a tentative
3 license only, insomuch as it could be cancelled on fourteen
days' notice, without the necessity of the Patents Company
assigning any cause whatever.

Q. So that all the licenses to rental exchanges contained
this provision? A. They all contained it.

Whereupon, at 12 :30 P. M., the hearing is adjourned
until 2 o'clock, at the same place.

NEW YORK CITY, October 15th, 1913. 1

The hearing was resumed pursuant to adjournment at, 2 o'clock P. M., on this October 15th, 1913, at Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon, H. N. MARVIN resumed the stand.

Direct examination continued by Mr. KINGSLEY: 2

Q. Referring to the projecting machine license, which is set out at page 87 of the Petition as "Exhibit 5," did the manufacturers of such machines, agree to sell them under the restriction and condition that they should be used solely for exhibiting, or projecting motion pictures, embodying the inventions of Reissue Letters Patent No. 12,192, under terms to be fixed by the licensor? A. They did.

Q. And the object of that provision you have already explained, have you not? A. Well, as I stated before, it was necessary that the license should provide for such a restriction, unless the Patents Company was prepared to 3
abandon its film patent, and derive no revenue from it; and if the maker of the machine should sell the machine when he knew it was to be used with film that infringed the patents of the Patents Company, and was not licensed, it might be a contributory infringement of the film patent.

Q. Did this license to manufacture projecting machines contain any provision relative to the price? A. Yes, there was a minimum price fixed in that license, a price below which it had been found impracticable to manufacture and sell a projecting machine that was suitable to produce a proper motion picture drama for the screen. There 4
had been some few machines manufactured and sold at a lower price originally, but those were very imperfect, and when they were used in producing a motion picture drama the result was so imperfect that the merit of the drama was obscured, and the audience was not pleased, and it was the intention of the Patents Company to prevent the use of such imperfect machines in producing licensed motion picture dramas.

1 Q. Are you familiar with the prices of projecting machines at the present time? A. In a general way, I am familiar with them.

2 Q. How do they compare with the prices as set out in the license to manufacture and to make projecting machines? A. Well, they are all higher than the minimum price fixed in that license, because, for one reason, the demands of the art have so advanced, that the requirements now are for machines a great deal more complete and perfect than the machine then in use, and the underwriters in the different parts of the country have insisted upon
3 certain attachments to the projecting machines that materially increase the price of these machines. Those attachments are designed to increase the safety of the machine, and minimize the fire hazard. These changed conditions have rendered that minimum price regulation substantially a dead letter, because, I believe, it would be impossible to manufacture and sell a machine, built in accordance with the modern requirements, at as low a price as \$150, which is the minimum fixed in the license.

3 Q. Why was a royalty exacted for the use of the projecting machine, as well as for the manufacture thereof? A. Well, a projecting machine is one of the principal mediums, or elements, through which the motion picture dramas are produced. It was desired to extend the use of the drama as broadly throughout the country as it was possible, in order to increase the revenues of the Patents Company. Therefore, it was considered expedient to fix a very low royalty on the manufacture and sale of the machines so that they might be sold at a reasonable price, and their use thereby encouraged. On the other hand, these machines were used exclusively for the purpose of
4 giving motion picture dramas for pay before audiences. The revenues derived by the exhibitor through the use of the machine were very large in proportion to the cost of the machine, and it was thought equitable and proper that that continuing use of the machine in producing dramas, should be taxed for the benefit of the owners of the patents. Therefore, the royalty was made small on the sale of the machine, and made continuous on its use. The two classes of people benefited by the patents were then paying tribute—the manufacturer, and the user.

Q. What was the amount of royalty fixed upon at that time, and by that I mean, after the license had been issued to manufacture the machine, and licenses were being issued to exchanges and exhibitors? A. The amount of the royalty for the sale of the machine was fixed at \$5.00 per machine. The amount of the royalty for the use of the machine was fixed at \$2.00 per week during the time that the machine was in use. It was fixed at that low figure, which, by the way, was a very low figure, as compared with the revenues derived by the exhibitor for the use of the machine, and was practically a negligible quantity when considered as an addition to the general expense of giving his exhibition, but it was fixed at that low figure with a view to encouraging multiplicity in motion picture exhibitions throughout the country. The former policy of the owners of some of the projecting machine patents was departed from in that particular, and the royalty made very much less than had formerly been charged.

Q. You stated that the amount of royalty was less than had formerly been charged? A. Yes, very much less.

Q. How much had been charged prior to that? A. Well, it had been the custom of the Armat Company, the former owners of the Armat-Jenkins patent on projecting machines, to charge an exhibitor's royalty of \$25.00 per week.

Q. Did the license agreement between the Motion Picture Patents Company and the makers of motion pictures, executed December 18th, 1908, provide that the licensees could lease licensed pictures upon the condition that they could be used solely upon exhibiting or projecting machines licensed by the licensor under its patents? A. Yes.

Q. Was it also provided in this license agreement between the Motion Picture Patents Company and the producers of motion pictures, that licenses would be granted by the Motion Picture Patents Company to persons, firms, or corporations, to manufacture projecting machines under its patents, subject to the condition that said manufacturers would not dispose of such machines, except upon the conditions and restrictions that the sale and purchase of them gave only the right to use them solely for exhibiting or projecting motion pictures licensed by the licensees of the Motion Picture Patents Company? A. Yes.

1 Q. Was this condition, or one substantially like it, subsequently incorporated in the license agreements between the Motion Picture Patents Company and the manufacturers of projecting machines? A. Yes.

Q. So that the maker of motion pictures produced them under a license from the Motion Picture Patents Company, stipulating that they were to be leased only for use on projecting machines on which a royalty or revenue was paid to the owners of the patents, in other words, on a licensed projecting machine? A. That is right.

2 Q. Did the Motion Picture Patents Company license the manufacturers of projecting machines to make and sell them subject to the condition that they be used only to display motion pictures produced by licensed producers? A. Yes.

Q. Did the Motion Picture Patents Company license rental exchanges to lease motion pictures from the licensed producers subject to the conditions that they would be subleased only for use on licensed projecting machines? A. Yes.

3 Q. Did the Motion Picture Patents Company license the exhibitor to use a licensed projecting machine subject to the condition that he would pay a royalty of \$2.00 per week, and would use only licensed motion pictures in connection therewith? A. Yes.

Q. Why did the license to producers of motion pictures contain the provision that they should only be exhibited on licensed projecting machines? A. Well, as I have stated in answer to a former question, that is the only way that a license under the film and camera patents could be granted without practically abandoning the projecting machine patents, and it was the desire of the owners of the patents to obtain revenues under all of their patents.

4 Q. Mr. Marvin, is there competition between the licensed producers of motion pictures today? A. Oh, yes; the keenest sort of competition between them.

Q. In what respect is that competition manifested? A. Well, that competition is manifested by the efforts of the manufacturers to excel each other in the quality of their productions, and it is evidenced by their extensive advertising of their products; and has been evidenced in very many instances by their sending around representatives, throughout the country, traveling men, to emphasize

to exhibitors the merits of their productions; and it is evidenced by their rivalry in securing talent for use in producing their motion picture dramas. 1

Q. Do they bid against each other for actors and actresses? A. Well, I believe that they do.

Q. At any rate, you know that there has been a constant increase in the salaries of actors and actresses? A. Yes, I know that; and I know that actors and actresses have frequently gone from one company to another, and I have heard, in a number of instances at increased salaries.

Q. Do they spend money on posters, advertising on the bill boards, respecting their productions? A. Yes; they prepare posters and circulate them diligently throughout the country among the exhibitors. 2

Q. Are these numerous posters that are shown by the exhibitors mostly furnished by the manufacturers? A. I believe that they supply them. I know that in most cases they supply them to exchanges to be distributed among the exhibitors at a very low figure, practically at cost, or below cost.

Q. And do they advertise in the trade papers? A. They do; extensively. 3

Q. And would you say that so far as you have observed, that each licensee of the Motion Picture Patents Company is doing what he can to stimulate public interest in his own particular productions? A. I should say that each of them is doing everything that he possibly can, or that occurs to him, to stimulate interest in his own productions, and to increase the demand for his own productions.

Q. What are the particular benefits to be derived by a licensee of the Motion Picture Patents Company in increasing the amount of motion pictures that he furnishes to exchanges and exhibitors? A. Well, in the first place, his profits are mainly dependent upon the quantity of motion pictures, or copies of motion picture dramas, that he supplies to the public, and then, the amount of royalty that he pays on motion pictures is dependent upon the quantity of motion picture he supplies, being smaller per foot in proportion as his output increases, and under the former license, and until June, 1913, he was entitled to share in the projecting machine royalties collected by the Motion Picture Patents Company, twenty-four per cent. of those roy- 4

- 1 alties being divided among the manufacturers, in proportion to the quantity of motion pictures supplied by them during the year.

Q. So that, under the original license agreement the manufacturer who increased his product received returns because of the increase—a direct return, he was enabled to cut down the proportion of his film royalties, and he obtained a larger percentage of the twenty-four per cent. of the exhibitors' royalties that were distributed to producers of motion pictures? A. That is correct.

- 2 Q. Did you advise the formation of the General Film Company? A. I did.

- 3 Q. When did the idea first occur to you to advise the formation of a rental exchange of that kind? A. According to the best of my recollection, the notion of a distributing company, to operate in some or all portions of the country, began to develop in my mind during the latter part of the year 1909, or in the early part of the year 1910. It originated as a result of the daily information that came to me through interviews and correspondence with exhibitors and exchanges from all parts of the country, indicating constantly that the existing system of distributing film to exhibitors was imperfect and inadequate, and there seemed to be a demand for greater efficiency in the distribution of motion picture dramas. Those considerations led me to think of the advisability of some different system of distribution.

Q. Later on you recommended the formation of a rental exchange by the manufacturers, did you not? A. I did.

- 4 Q. What response did your recommendation elicit when first made? A. Well, my suggestions along those lines were not met with favor at the outset. It was held by a number of manufacturers that it was not the province of the manufacturer to interfere with the distribution of films. It was feared that any movement of that kind might have a more or less disastrous effect upon what they considered to be their market, that was the existing rental exchanges; the business was not considered profitable, and they were reluctant to entertain the idea. Some of the manufacturers at that time were personally interested in exchanges, and some of them had closed some of their offices because they were unprofitable, and they were very dubious, and furthermore, they were very jealous of each other. They were fearful that

if anything of that kind was accomplished by some means or other, one manufacturer might be more favored than another, and that the entire freedom of competition which then existed between them might be in some way constrained.

Q. Did you, about the time of the organization of the General Film Company, make an estimate of the amount of film on hand among the various rental exchanges of the country? A. I did.

Q. What was the purpose of that estimate? A. Well, the purpose of that estimate was to determine how much material in the form of motion picture records or dramas was in use in supplying the demands of exhibitors throughout the country at that time, and for the purpose of learning how much material of that kind would be required in case the General Film Company, or such organization as might be effected, should be extended throughout the entire country. My purpose was to look ahead and see what the ultimate demands might possibly be if such an organization were tried and proved to be efficient and satisfactory, if it should meet with a demand on the part of the public such as would warrant its broad extension, and it seemed only reasonable to investigate and find out how far it would have to go. What it would require in the way of capital in order to do a business of that magnitude. As a person starting into any line of business might naturally look over the possible field to which the business might be extended, with a view to making provisions of one kind or another, so that extension might go on if there was a demand for it.

Q. Did the licensed producers of motion pictures go into the new company with the expectation that great profits would result, so far as you know? A. I know positively that they did not. I know—well, I may say that I do not know that any of them anticipated making profits, at least substantial profits, through such an organization. What they apprehended was that they would suffer losses from the manufacturing branch of their business, but they finally concluded to go into it, very largely for the purpose of giving stability to their market as manufacturers, and for the purpose of correcting the existing abuses, so that the entire art might be made more stable and be more broadly extended, by giving greater security to investors in erecting theatres, and many other ways. But they had no idea of making

1 profit, and a number of them at least were firmly convinced that they would suffer loss.

Q. Did you say or intimate that one of the reasons that led you to think that the formation of a rental exchange would be a good thing, was the possibility of greater efficiency of distribution? A. Yes, that was one of the dominant ideas that I had in mind. The existing system was very inefficient and wasteful in many ways, and this condition affected the rental exchanges and the exhibitors and the public.

2 Q. Were you present December 18th, 1908, when the license agreements between the Motion Picture Patents Company and the producers of motion pictures were signed? A. I was.

Q. Do you remember that there was an individual named Lodge present on that occasion, or during some part of the meeting? A. I do.

Q. Was there any discussion among the producers of motion pictures on that occasion of the desirability of forming a rental exchange, within your hearing? A. There was not.

3 Q. Did you participate in any discussion with any of the producers of motion pictures, or with anyone else, on December 18th, 1908, with reference to the desirability of forming an exchange? A. I did not. Nothing of the kind was thought of at the time.

Q. Did you, at any gathering or meeting or conference of the licensed producers of motion pictures, in December of 1908, either before the occasion of the signing of the license agreements or afterwards, participate in any conference or discussion in which the desirability or feasibility of forming a rental exchange was taken up? A. I did not.

4 Q. Were you ever present at any gathering besides the one of December 18th, 1908, at which Lodge was present? A. Lodge was present at one other meeting only of manufacturers besides the meeting of December 18th, 1908. At that first meeting the only topic of discussion was the license agreement, and its terms, which most of those present had never seen before, and the entire time of the meeting was occupied in discussing the various terms of this license agreement. On that occasion Lodge was present. The only other occasion at which Lodge was present at a meeting of the manufacturers was a meeting called shortly after that meeting of December 18th, for the purpose of meeting with

Mr. Lodge and discussing with him the feasibility of making some adjustment of the control of the Melies Manufacturing Company or the distribution of its stock, which might possibly make it expedient for the Patents Company to grant a license to this Melies Manufacturing Company of Chicago, of which Lodge was the representative. On the occasion of that meeting, no other topic than the question of granting this license to Lodge's company was taken up or discussed. The meeting was called for the explicit purpose of discussing that topic only, and no other topic was considered, and Lodge was present at no other meeting of the manufacturers other than those two that I have mentioned.

Q. Did the Motion Picture Patents Company at any time after the formation of the General Film Company cancel the license of a rental exchange in order that the General Film Company might more readily purchase the same? A. It never did, and there was no reason why it ever should, because no such act of the Patents Company could in any way affect the purchase of property of an exchange by the General Film Company.

Q. Did the General Film Company or its representatives, either directly or indirectly, induce the Motion Picture Patents Company or its representatives to cancel the license of a rental exchange for the purpose of aiding the General Film Company to acquire the same? A. No.

Q. Did the General Film Company in any way control the course, conduct or official actions of the Motion Picture Patents Company? A. It did not in any way.

Q. Do you recall that the Greater New York Film Rental Company's license was cancelled? A. Yes.

Q. Do you recall that the notice of cancellation of the Greater New York Film Rental Company was suspended shortly after it was sent? A. Well, my recollection is that it was withdrawn or suspended shortly before the time when the cancellation would have become effective.

Q. Do you recall the occasion of the suspension of the cancellation or withdrawal, as the case may be? A. Yes, I recall the circumstances. I received a telephone communication from Mr. Kennedy, who stated that he was in his office, and that Mr. Fox, of the Greater New York Film Rental Company, was there with him, and that he had about concluded negotiations for the purchase of some of the property of the Greater New York

1 by the General Film Company, and that he and Mr. Fox
had practically agreed upon the terms, and that there
was no doubt but what the deal would go through, and
under the circumstances, he suggested the propriety of
withdrawing the notice of cancellation, as he expressed it,
to save Mr. Fox from the humiliation of having his li-
cense cancelled, and the convenience of exhibitors who were
then being supplied with service by the Greater New
York. And I agreed with Mr. Kennedy as to the pro-
priety of withdrawing the notice of cancellation under
2 the circumstances, and I then called up a number of the
licensed manufacturers on the telephone, and acquainted
them with the circumstances, and informed them that
under the circumstances I considered it advisable to with-
draw the notice of cancellation, and they concurred with
me in my judgment. And, accordingly, a notice withdraw-
ing the notice of cancellation was sent to the Greater
New York Film Rental Company either that day or the
following day, I don't remember which.

Q. On the occasion of this conversation with Mr. Ken-
nedy on the telephone, did he say to you in terms or
substance: "I am negotiating to buy Fox's plant. In fact,
3 we have agreed on the terms and the price, and everything,
but I find that I do not want to buy the plant without
the license is reinstated." I address my question particu-
larly to the last clause: "But I find that I do not want
to buy the plant without the license is reinstated?" A.
Nothing of that sort was said; of any nature. Nothing
that by any chance could be construed to have a similar
meaning.

Q. On the occasion that Mr. Kennedy called you up
with reference to the Fox license, did he say to you, either
4 in terms or in substance, "You know, Marvin, I don't want
this same condition to exist in this case as it did in
the Marcus Loew case, as it did in the People's Vaudeville,
the People's Exchange, where, instead of reinstating the
license, you just extended the cancellation notice for a
few days longer, and in signing the papers that were neces-
sary for the sale of this plant, you had to write several
of those letters, and it was quite a complicated affair?" A.
Nothing of that sort was said. There was no reason why
anything of that sort should have been said. There was
no such complication in connection with the People's Film

Exchange. It was not essential to the purchase of the Greater New York Film Rental Company by the General Film Company, that that exchange should be licensed. The General Film Company bought the property of an exchange whose license had been cancelled long months before the purchase was made. 1

Q. On the occasion of this conversation over the telephone between you and Mr. Kennedy, did Mr. Kennedy say to you, in terms or in substance: "In this case, I want the license reinstated, so that the General Film Company can purchase the business of the Greater New York Film Rental Company?" A. Nothing of that kind was stated. 2

Q. The reasons which Mr. Kennedy gave for asking the withdrawal of the cancellation you have already stated, have you not? A. I have already stated the only reasons that he gave.

Q. And the reason that actuated you in sending the letter of withdrawal to the Greater New York Film Rental Company, you have already stated? A. I have already stated. In order to make that entirely clear, I might explain more fully that a large number of the customers of the Greater New York Film Rental Company who, by the terms of their license, could only make use of licensed film, expected to get their daily supply of motion pictures from the Greater New York Film Rental Company. If those exhibitors should come to the Greater New York Film Rental Company after its license was cancelled and before its property had been purchased by the General Film Company, they would have found that they were unable to obtain the more recent issues of licensed motion pictures. Their service would be disorganized. It would be in confusion. They would be compelled to go either without those licensed films or go to some other licensed exchange to get them, and it seemed unnecessary and undesirable to put them to that inconvenience for a few days pending the conclusion of the purchase of the Greater New York Film Rental Company's property by the General Film Company. 3 4

Q. Had you, in fact, extended the license in the Marcus Loew case? A. We withdrew the notice of cancellation.

Q. Is this a copy of the notice of the withdrawal of

- 1 the cancellation which you sent to Marcus Loew or the People's Film Exchange? A. This is a copy of that notice.

Mr. KINGSLEY: I offer it in evidence.

The same is received in evidence and marked "Defendants' Exhibit 40," and is as follows:

Defendants' Exhibit No. 40.

March 28th, 1911.

- 2 People's Film Exchange,
260 West 42nd, Street,
New York City.

Gentlemen:—

Referring to our letter of March 16th notifying you of our intention to terminate your license on the 3rd day of April, 1911, we hereby notify you that said notice of termination is hereby withdrawn.

- 3 Yours truly,

MOTION PICTURE PATENTS COMPANY,
By

HNM/LMM
(Copy)

-
- 4 By Mr. KINGSLEY:

Q. What is the Board of Censorship, Mr. Marvin? A. The Board of Censorship is a Board whose function is to inspect motion picture dramas before they are issued to the public, with a view to prevent the publication of motion picture dramas which, in the opinion of the Board, are undesirable, from the standpoint of morals, or public policy. This Board had its first origin with the Biograph Company, some time prior to the organization of the Motion Picture Patents Company, when the Biograph Com-

pany licensed the Great Northern Film Company to import and distribute motion pictures for use on motion picture projecting machines embodying inventions covered by patents owned by the Biograph Company. Some of the motion pictures imported by this concern prior to the time of this license were indecent and obscene, and the Biograph Company, not wishing to stand sponsor for motion pictures of that type, insisted upon an inspection of motion pictures imported by this concern, and the concern agreed not to circulate any copies of motion pictures that were condemned by the Biograph Company. The next step in the censorship proposition was taken by the licensed manufacturers shortly after the licenses were issued by the Motion Picture Patents Company. The manufacturers organized themselves into a Board of Censorship for the purpose of inspecting each other's products, with a view to preventing unintentional or inadvertent issues of any motion pictures that, in the judgment of the majority, were undesirable, from the standpoint of morals or public policy. Very soon thereafter, the Patents Company was approached by representatives of the People's Institute in this City, who suggested that they organize a censorship board, which they considered might be more effective, and certainly would inspire greater confidence on the part of the public than would a board composed by the manufacturers themselves, since the board of the People's Institute would be recognized as an independent board, entirely free from the control and influence of the manufacturers. It was the purpose of this Board, as indicated by the People's Institute, to criticize all motion pictures that should be issued in this country, whether issued by the licensees of the Motion Picture Patents Company, or by others. The Patents Company and the manufacturers recognized the arguments of the People's Institute as good, and thereupon delegated to them the functions that the manufacturers' Board would have exercised. The Motion Picture Patents Company co-operated with this Censorship Board appointed by the People's Institute, and affiliated philanthropic societies, to the extent of permitting them to make use of one of the rooms in the office of the Motion Picture Patents Company for the inspection of licensed motion pictures, and the several manufacturers contributed funds to the People's Institute to be used by

- 1 them in any way that they saw fit. It was provided, among other conditions of the Censorship Board, that no member—

Mr. GROSVENOR: I object to this long dissertation as having no bearing upon any of the issues in this case.

- 2 A. That no member of the Board who received any salary should have any voice in the criticism of motion pictures, the active Board being composed entirely of disinterested people who came there and criticized the pictures solely through their interest in the public good.

Q. If the Board objects to a picture, is it withdrawn or changed? A. It is.

Q. And the verdict of this Board is accepted, is it? A. It is.

Q. At all times? A. Yes.

Q. Is the Board still in operation? A. Yes.

Q. Is it still passing upon pictures at the Motion Picture Patents Company's room? A. Yes.

- 3 Q. How often does it meet? A. I believe they now meet four days in a week.

Q. Did you say that many of the foreign pictures were indecent at the time of the formation of this Board of Censorship? A. Yes, at the time of the organization of the Censorship Board, many of the pictures imported from foreign countries were indecent and obscene.

- 4 Q. Are imported pictures also exhibited before the Board of Censors? A. Yes. The Board of Censorship now pass upon substantially all of the motion pictures that are manufactured in this country or imported. There may be an occasional picture that is imported and issued without their supervision.

Q. Do you recall that in the month of January, 1909, there was a meeting or convention of the members of the Film Service Association at the Hotel Imperial in New York? A. I remember that there was such a meeting about that time.

Q. Do you recall that a committee came to the office of the Patents Company relative to the exchange license agreements which had been submitted to that meeting? A. I do.

Q. Did you hear any discussion or participate in

the discussion which followed the arrival of that committee? A. Well, I participated in that discussion. I don't remember very distinctly the details of it, but the burden of it was that this committee objected to some of the conditions of the exchange license agreement as submitted to them, and tried to induce modifications of some of these provisions, but it was not decided to modify the license agreement in accordance with their wishes.

Q. Were you an officer of the Patents Company at that time? A. Yes, I was Vice-President at that time.

Q. And who was President? A. Mr. Dyer.

Q. On the occasion of this committee's coming to the office of the Patents Company, did you hear Mr. Dyer state to any member of the committee or to the committee generally, that the fourteen-day clause of the rental exchange license agreement would not be enforced? A. I did not.

Q. Was any such statement made in your hearing by anyone? A. No such statement was made in my hearing by anyone.

Q. At the time the Motion Picture Patents Company licensed the producers of motion pictures, did the company license practically all of the producers in the United States? A. Yes. The Patents Company licensed all of the producers of motion picture dramas, who were at that time producing anything to speak of.

Q. What was the purpose, Mr. Marvin, in keeping the title of motion pictures in the producers? A. Well, these motion picture strips or records were records of dramas produced by these licensed producers. Now, the entire reputation of these producers among the public, and ultimately the popularity of their subjects, and their revenues from them, depended not merely upon the original merit of the dramatic production as photographed, but also to a very large degree upon the perfection of the representation, and the popularity of the art as a whole depended upon the general excellence of these motion picture exhibitions. Now, these motion picture films are fragile affairs, not durable, and when they became worn, scratched and mutilated, they were incapable of giving satisfactory presentation of the dramas. One of the most serious defects to which the motion picture film record is subject is mutilation by loss of some portions of it. It frequently happens

- 1 that when that picture strip is passed through the projecting machine, that the machine may clog, the sprocket holes may become torn, and the film may break. In that case it is customary for the operator or the inspector to cut out bodily a few inches of the piece, a few feet of the strip, and stick the ends together. The result is, there is, so to speak, a chunk of the drama eliminated. That may occur at a very crucial moment, and in such a way as sometimes to destroy the sequence of the dramatic events. Now, if these picture strips are sold and passed beyond the control of the producer, there is no way in which it is
- 2 possible to prevent their public exhibition. They were substances which had no intrinsic value or interest to anyone further than as vehicles of exhibition of these dramas. To mutilate a motion picture strip was to mutilate a drama. It was to bring discredit upon the author of that drama. It was to bring discredit upon the art as a whole. It was a new art. People were to be numbered by thousands at that time who had never seen a motion picture drama. In fact, no later than last week, I heard a man in the streets of New York, an intelligent young man, say that he had never seen a motion picture exhibition. Now, it
- 3 was the province of those interested in this art to educate the public in this art, to create a demand for this art, if they desired to obtain revenues from it; consequently these mediums of expression of this drama needed to be cherished and preserved and taken care of, and withdrawn from circulation the moment they became so impaired that they were incapable of producing satisfactory results. That could only be accomplished so long as they remained under the ownership of the producer of the drama, and it was not even considered feasible, or wise, on
- 4 the part of the owners of the patents to depend entirely upon the judgment, even of the producer, because he, in his desire to use these films as far as possible, might permit them to be used longer than they should be, thus bringing discredit upon the art as a whole, and minimizing revenues under the patents. Therefore it was provided that the ownership of these films should remain in the hands of the producers, and that they should be returned to the producers for destruction after a reasonable life, and there was no way in which that return could be insured, except by retaining the ownership. Furthermore, those motion

picture strips, in violation of the terms of the licenses to the manufacturers or the rental exchanges, might, as they often did, find their way into the hands of unlicensed individuals, and become the instruments by which the patents of the Patents Company on projecting machines were infringed by unlicensed users. Frequently these films were stolen, and they were found in unlicensed places of exhibition in infringing use. And the only way that that could be properly stopped was by having the right of replevin in those motion picture strips rest with the producer.

Q. Do you know whether prices have been materially increased to exhibitors throughout the country since the formation of the Patents Company? A. Prices of exchanges to exhibitors? Rental prices?

Q. Yes. A. I don't think that the prices of exchanges to exhibitors have been materially increased.

Q. What do you say regarding the prices of theatrical production itself, at motion picture theatres throughout the country? A. Prices of admission to motion picture theatres have gradually been increased. And by that I mean that there are now a larger number of theatres of the better class, that charge a higher price of admission, than there were formerly. Of course, there still exist a number of the Nickelodeons, as they are called, the small store shows where the admission is five cents, but the advance of the art has been such, and the demand of the public has been such, that theatre managers have been warranted in spending large sums of money in equipping very fine theatres, to which they are compelled to ask a higher price of admission, and they produce there an exhibition which is attractive to well-to-do people, and is freely patronized by them, and where they pay a price of admission considerably more than the original five cent price.

Q. Would you say that the increased price of admission in theatres to which you have referred, is due in any way to the increased price of service? A. No. It is possible in very many localities to see the same performance, the same dramatic performance, in one theatre for five cents, and in another theatre for fifty cents. I have in mind at this moment a theatre of this kind, that was erected at a cost of several hundred thousand dollars, which is as fine a building, probably, as any theatre building in New York City, which is devoted exclusively to the exhibition

- 1 of moving pictures. The prices in that theatre range from ten cents to fifty cents. The people in the upper balcony pay ten cents, the people in the boxes of the balcony, to which they are taken by an elevator, pay fifty cents. Now, you can go a block or so from that theatre, and see the same performance, the same motion picture dramas being exhibited in small shows, for five cents, but the surroundings, of course, the accomodations, the accessories in the fine theatre are much better than they are in the little store show, so that the increase in price of admission has
- 2 not been due to an advance in the cost of service, but has been due to the accessories with which the exhibitions are surrounded, the conveniences.

Q. The one point that I want to make clear is this: Are there just as many five and ten cent exhibitions today as there were in 1908? A. I should say that there are a great many more than there were in 1908.

- Q. And would you say that the quality of them had improved, in the meantime? A. The quality of all the exhibitions in the country has enormously improved, because the quality of the productions released and distributed by
- 3 the licensed manufacturers and rental exchanges at the same price as formerly charged, has enormously increased, and that, notwithstanding the fact that the cost of these productions has increased fabulously. Where the maximum cost of productions formerly was measured in hundreds of dollars. it is now measured in thousands of dollars.

Q. Is it feasible for the producers of motion pictures to rent directly to the exhibitors? A. No. That is not ordinarily feasible, because motion picture exhibitors require a large variety of motion pictures, a much greater variety than any one producer so far has been able to furnish.

- 4 Q. Then you would say that there is a necessity for a rental exchange? A. I would, yes.

Q. What is the chief advantage of a rental exchange to the exhibitor? A. Well, the rental exchange offers to the exhibitor a collection of productions gathered from a large number of producers. It offers a temporary use for a comparatively small sum, of this great variety of subjects, that are gathered together by the exchange, from all over the world. It enables him to vary his program to suit the requirements of his audience, and to obtain this

very diverse service through negotiations with one office only, instead of dealing with a large number of producers. Furthermore, if the exhibitor had to go to a producer direct, to get his motion pictures, it would be necessary for the producer to keep on hand motion pictures of all ages of his own make, and each producer would then become a rental exchange, dealing in his own pictures only, and the exhibitor would have to deal with ten offices where he deals now with one. Since changes, in many cases, of programs, are made daily, it would scarcely be humanly possible to chase around to all these exchanges and collect films.

Q. Was there any agreement, understanding or arrangement, between the General Film Company and the Patents Company, not to grant other exchange licenses? A. None whatever.

Q. Does the Patents Company own any stock in the General Film Company? A. No.

Q. What effect does age have upon the value of the motion picture service? A. Age is a controlling factor, generally speaking, in motion picture film service, not merely by reason of the wear and tear on the film and its deterioration through use, but because dramatic subjects very rapidly lose their value as they grow stale. The demand is for the newest, latest productions that are issued, so that motion picture dramas issued today may rent for \$25 for the day's use, where tomorrow they may bring only \$15, and the day following \$10, and so on down, although the picture strip itself may be in perfect condition; in fact, although the particular strip that is rented may not have been used before. Its value may be compared somewhat to the value of news to a newspaper.

Q. What was the purpose of the importing license given the General Film Company? A. The object of that was to enable the General Film Company to obtain now and then motion picture dramas of exceptional merit that might perhaps be produced in Europe, and might not be imported into this country by any licensed importer. As a matter of fact, however, that provision was found to be superfluous, and it was never exercised. The General Film Company never acted under that condition of their license, and at the expiration of the first term of that license, that provision was permitted to lapse and was not again incorporated. The license itself was permitted to lapse, and

1 was never used. It was never acted on while it was in existence.

Q. Are you sufficiently familiar with the suits brought by the Biograph Company under the Latham patent to tell us how many there were, or anything about them? A. According to my best recollection, there were about nine suits brought by the Biograph Company, while it owned the Latham patent. These were principally directed against the then licensees of the Edison Company. There was a suit against the Edison Company, against, I believe, the
2 Essanay Company, the Kalem Company, and the Vitagraph Company. There was a suit against Fox, I believe, or the Greater New York Film Rental Company—I think it was against Fox personally, and I believe there were some suits against some other theatre owners. One down in Alabama, I think. There was a suit against Selig of the Edison licensees. The conspicuous infringers of the patents.

Q. Why was it provided in the license to producers of motion pictures that the licensees could not lease, loan, rent out, sell, or offer for sale, or otherwise dispose of, in the territory aforesaid, motion pictures to anyone purchasing or otherwise obtaining, leasing, using, loaning or
3 renting out, selling and offering for sale or otherwise disposing of or dealing in motion pictures embodying the inventions of said Reissue Letters Patent No. 12,192, not the output of the licensee or the additional licensees hereinafter provided for? A. Any such motion pictures not the output of the licensee or the other licensees would have been motion pictures made and issued in infringement of the patents owned by the Patents Company. Therefore, if any licensee should supply motion pictures to such a party so making or issuing infringing motion pictures, they
4 would be aiding and abetting them in infringement of the patents of the Patents Company. Furthermore, such a person making and issuing infringing motion pictures could only supply them to exhibitors using unlicensed projecting machines, who were infringing the patents of the Patents Company on projecting machines, and if licensees knowingly supplied motion pictures to such individuals who were contributory infringers of the projecting machine patents, the licensees themselves would become contributory infringers of those projecting machine patents. Therefore, such a provision as that was a consistent pro-

vision with the other limitations of the license, and it was intended by inserting it, to have that plainly and explicitly understood by the licensees who accepted licenses from the Motion Picture Patents Company. 1

Q. Why was the provision incorporated in the rental exchange agreement to the effect that the licensee shall not sell, rent, or otherwise dispose of, either directly or indirectly, any licensed motion pictures, however the same shall have been obtained, to any persons, firms or corporations or agents thereof, who may be engaged, either directly or indirectly in selling or renting motion picture films? A. Any such persons who engaged in selling or renting motion picture films unless they were licensed by the Patents Company, would be infringers of the Patents Company's patents, and if the rental exchange should supply motion pictures knowingly to such people, they would be contributory infringers. They could not supply such motion pictures to the licensed rental exchanges, since licensed rental exchanges could not lease such motion pictures from other rental exchanges, without violating their own licenses, and they would, therefore, be accessories to such violation in leasing motion pictures to the other licensed rental exchanges. 2

Q. Did you, either as an individual or as a representative of any corporation with which you were connected, determine or unite with others who had determined to destroy competition between these defendants, in the motion picture art? A. I did not. 3

Q. Was the Motion Picture Patents Company organized for the purpose of destroying competition or restricting competition in the motion picture art between these defendants? A. It was not. It was designed to promote competition.

Q. By whom was the Motion Picture Patents Company organized? A. The Motion Picture Patents Company was organized by representatives of the Biograph Company and of the Edison Company. 4

Q. Was it the purpose of the Motion Picture Patents Company or its organizers, to acquire all of the patents relating to the motion picture art? A. No.

Q. Was any attempt made to obtain a list or enumeration of all of the patents relating to the motion picture art? A. No.

Q. Was there any intention, plan, purpose or agree-

1 ment, either written or verbal, specific or implied, that the Motion Picture Patents Company was unlawfully to formulate license agreements by which the defendants herein were to control, restrain, and monopolize all branches of commerce among the States of the United States and with foreign countries, relating to the motion picture art? A. No.

Q. When the various corporations first entered into the license agreements of December 18th, 1909, were they actuated by an unlawful purpose to restrain, control and monopolize the motion picture art? A. They were not.

2 Q. Were any of the corporations with which you were connected at that time actuated by the purpose unlawfully to control, restrain and monopolize the motion picture art and exclude others therefrom? A. No.

Q. Was the license agreement with respect to the manufacture of projecting machines entered into with the purpose and intention of unlawfully monopolizing, restraining, and controlling a part or a whole of the motion picture art? A. No.

3 Q. Was the General Film Company organized for the purpose of monopolizing and controlling the business of rental agencies throughout the United States? A. No.

Q. Do you recall that there has been a statement in this case to the effect that \$100,000,000 has been invested in the motion picture art? A. I believe some such statement as that was made in the answer of the defendants.

4 Q. That includes what? A. Well, that estimate would necessarily include the valuation of the property, theatre property, real estate, and so on, devoted to the exhibition of motion picture dramas throughout the country, as well as to the producing plants of the producers of motion pictures. The supply of motion picture drama records, and all of the other appliances, projecting machines, and so forth, used in the exercise of this art.

Q. Has the Motion Picture Patents Company any interest in or investment in theatres? A. None whatever.

Q. Did the Biograph and Armat companies manufacture or sell projecting machines prior to 1908? A. No. I might qualify that by saying that prior to that time the Biograph Company made for its own use a very limited number, I should say twenty or twenty-five, projecting machines, not

of the present commercial type, adapted to use very wide film, two and three-quarter-inch film, which it used in giving exhibitions in theatres at that time. Those machines were never sold. 1

Q. Had the Biograph or Armat companies, prior to 1908, licensed any manufacturers under their patents to make projecting machines? A. The Armat Company, prior to 1908, licensed the Edison Company for a limited time to make projecting machines under the patents of the Armat Company, which machines were not to be sold, but were to be leased only. But that license was of very brief duration. It expired or was cancelled after a short time. The Edison Company then continued to make and sell projecting machines in defiance of the patents. 2

Q. Do you know whether the Edison and Armat companies had a lawsuit thereafter? A. Oh, yes; the Armat Company brought suit against the Edison Company and secured a preliminary injunction against the Edison Company, which, for a time, prevented their manufacturing and selling machines embodying the Armat invention. But that preliminary injunction was subsequently dissolved, when the Edison Company obtained some sort of an alleged license under that patent through some one who claimed to have some rights under the patent. And then the lawsuit was progressed, I understand, as diligently as the funds of the Armat Company would permit. The Armat Company also licensed the Biograph Company, under its patents to manufacture and use, but not to sell, projecting machines for its own use. 3

Q. What companies among the licensees are represented in the directorate of the Motion Picture Patents Company? A. The Edison Company and the Biograph Company only.

Q. When exchange licenses were granted after the formation of the Motion Picture Patents Company, what investigation did you make regarding them, and what was your policy with respect to granting these licenses? A. Well, some or all of the licensees of the Motion Picture Patents Company, prior to the organization of that company, had been in the habit of dealing with some or all of the rental exchanges then existing in the country, and the standing and desirability of those various rental exchanges was discussed with such manufacturers as had knowledge there- 4

1 of, and their opinions were obtained as to the desirability of those exchanges as licensees. There was no time to enter into a more careful and searching investigation of their merits at that time, and the uncertainties necessarily attendant upon such a method of selection were guarded against by the fourteen-day cancellation clause, which permitted the Patents Company to cancel any license that, after trial, should prove to have been issued inadvisedly, or any license that might be subsequently found desirable to cancel because of some change in the policy or the personnel of some of the people identified with the exchange.

2 Q. I think you told us this morning that the Biograph Company did not cut the prices in 1908 at the time that the Biograph Company and George Kleine were on the one side, and the Edison Company and its licensees were on the other?

A. No, the Biograph Company did not reduce its prices.

Q. After the Biograph Company took out a license with the Patents Company, did it obtain any increased prices of its motion pictures, because of the licenses from the Patents Company? A. No; in fact, the price that it obtained was somewhat less under the license of the Patents Company than it had formerly enjoyed.

3 Q. What was the Western Committee? A. Well, the Western Committee was composed of three licensees who resided in the City of Chicago. It was an entirely unofficial body; it had no authority of any nature. Its function was to investigate conditions, particularly complaints of exhibitors and rental exchanges, and it was intended that it should observe the conditions in that part of the country remote from New York, and report any violations of the license of exhibitors or exchanges that might come under its observation, and by its more intimate observation of remote exchanges or exhibitors, should be in a position to advise the officials of the Patents Company as to the desirability of granting or cancelling licenses, or in any manner touching upon the conduct of its business in licensing exhibitors and rental exchanges. It had no authority to act in any way.

4 Q. Do you recall the names of its members? A. It was composed of Mr. George Kleine, Mr. William Selig and Mr. George Spoor.

Q. Do you know whether or not Edison, prior to 1908, advertised or sold film as a patented article? A. He did. In his catalogues he called attention to the motion picture

drama subjects listed, the records of motion picture dramas, as being patented articles, and he issued, more or less, statements directing the attention of the public to the fact that his patents controlled motion picture films and cameras. 1

Q. Have you completed the work of looking up the matter I asked you to work up for me with reference to rental exchanges? A. I am sorry; I have not been able to quite complete it.

Q. Will you have it by the first thing in the morning? A. Yes, I can be ready, or practically ready, with that.

Whereupon, at 4 o'clock P. M., the hearing is adjourned until Thursday, the 16th day of October, 1913, at 10:30 o'clock A. M., at the same place. 2

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,
Petitioner,

v.

2 MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, October 16th, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M., October 16th, 1913, at Hotel Manhattan, New York City.

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Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

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Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon H. N. Marvin resumed the stand.

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Direct examination continued by Mr. KINGSLEY :

Q. Going back to the time of the formation of the Biograph Company, and then extending your answer to a period covering the entire intervening period, has there been, at any time, any understanding or agreement on the part of your company with anyone to limit the output either of subjects, or copies of subjects, of motion pictures? A. No.

Q. Has your company at all times, been free to enlarge its business with respect to the number of motion pictures it might produce? A. Yes. 2

Q. Was the standing order a trade condition existing at the time of the Patents Company's organization, and recognized as such in framing the license? A. Yes, sir.

Q. In your direct testimony there was some evidence given with respect to the Latham patent, but it does not appear there from whom it was bought. From whom was the Latham patent purchased? A. The Latham patent was purchased from Anthony & Scoville.

Q. Where was that company located? A. That company, I believe, was located at Binghamton, New York. 3

Q. Did you know anything about the company at that time, with respect to its financial standing and condition? A. It was generally understood at that time that the company was in financial straits, and had been for some time previous. They were exercising all their ingenuity to raise funds to carry on their business, and to prosecute the litigation under patents that they held, which purported to cover the manufacture of raw stock on which it is customary to print motion pictures.

Q. Do you recall that a notice was sent by the Motion Picture Patents Company, on or about November 14th, 1911, to the Greater New York Film Rental Company, cancelling its license? A. Yes. 4

Q. What action had been taken, if any, by the producers of motion pictures prior to this cancellation? A. Prior to the notice of cancellation the matter of the conduct of the Greater New York Film Rental Company, in its handling and care of licensed motion pictures, had been considered by the licensed producers of motion pictures. There had been a discussion of the doings of the Greater New York

1 Film Rental Company, and, in particular, the attention of the licensed producers had been directed to a certain occurrence about that time, in which licensed motion pictures supplied by the Greater New York Film Rental Company had been found in an unlicensed theatre, and had been seized in a replevin action, and the licensed producers had united in recommending to the Motion Picture Patents Company that the license of the Greater New York Film Rental Company be cancelled.

2 Q. Did the Patents Company report to the licensed producers of motion pictures, the fact that licensed motion pictures, which had been leased to the Greater New York Film Rental Company, had been found in an unlicensed theatre? A. It did.

Q. And did it report that these licensed motion pictures were being shown on an unlicensed projecting machine? A. It did.

3 Q. Now, in that connection, I want to ask you, to what extent were the producers of motion pictures consulted relating to settling questions arising between the Motion Picture Patents Company, and the rental exchanges? A. According to the provisions of the licenses granted to the producers of motion pictures by the Motion Picture Patents Company, it was necessary for the Motion Picture Patents Company to obtain the consent of a majority of its licensees before cancelling the license of a rental exchange. There was a provision to that effect incorporated in the license agreement, upon the demand of the licensees. When the license agreement was prepared it was prepared in recognition of the fact, that the contemplated licensees, or the most of them, already possessed certain interests in certain of the patents that were assigned to the Motion Picture Patents Company, that is, the licensees under the Edison licenses possessed certain rights under those patents, conveyed to them by the Edison licenses. In considering the matter of licensing rental exchanges, the licensees under the Edison patents insisted that it should be provided that the Motion Picture Patents Company would grant a rental exchange license to any person, or company, designated by a majority of the licensees, and to make that provision effective it was further provided that the Motion Picture Patents Company would not cancel any existing li-

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cense to a rental exchange without the consent of a majority of the licensees, although the Motion Picture Patents Company was not obligated to cancel any license, nor was it debarred from granting any license that it chose to grant—it was merely provided that the Patents Company must grant licenses on the demand of the licensees, and that the Motion Picture Patents Company would not cancel any license, without the consent of a majority of the licensees. The purpose of that provision was to protect the market of the licensees. By the terms of the license, the licensees might furnish motion pictures for subleasing only to licensed exchanges, but the licensees recognized the fact that the owners of the Patents Company, that is, the Biograph Company, and the Edison Company, were active competitors in the production of motion pictures of the other licensees. They had, up to that time, been the dominant factors in the art. They had been looked up to by the other licensees, as being the leaders in the motion picture art. They were known, each of them, to possess dominant patents in the art. It was apprehended that without some such provision, the Edison Company and the Biograph Company, might conspire together, and limit the number of licenses granted to rental exchanges, who would lease the majority of their supply of films from the Edison and Biograph Companies. Without that provision there would have been an opportunity for the Motion Picture Patents Company to have favored the Biograph Company, and the Edison Company, in that manner, and to have practically eliminated the entire market of the other licensees. Therefore, the licensees insisted that they be protected by that provision of the license agreement, which made it incumbent upon the Patents Company, to grant exchange licenses to any persons, firms, or corporations, designated by a majority of the licensees. In view, therefore, of that provision of the license agreement, whenever the Motion Picture Patents Company, through information, or observation, became satisfied that the question of the cancellation of the license of a rental exchange must be considered, the Motion Picture Patents Company presented to the licensees the facts, as they appeared to them in the matter, and asked for expressions of opinion on the part of the licensees, as to whether such license should be cancelled or

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- 1 not. It sometimes happened that the fault of an exchange,
while grievous, and while of such a character that if per-
sisted in, would make it very undesirable to continue the
license of the exchange, yet, nevertheless, might be of such a
character that if corrected, and not repeated, that it would
be considered best to continue the license of the exchange.
In such cases it was sometimes recommended by the manu-
facturers that the exchange be permitted, in lieu of having
its license cancelled, to pay a penalty to the Patents Com-
pany, which should be considered in place of a cancella-
2 tion, and then, if the exchange accepted that alter-
native, and preferred to pay the penalty rather than to
give up its license, the exchange was permitted to continue
with its license, the penalty being imposed as a lesser
punishment for violations of the license, and being in lieu
of cancellation.

Q. Did you know at the time, that the notice of can-
cellation of the license of the Greater New York Film
Rental Company was sent to that company, that there
had been negotiations for the sale of its exchange with the
General Film Company? A. I did not.

- 3 Q. After the formation of the Patents Company, and
the signing of the license agreements, the question of the
return of films was taken up by the Patents Company, was
it not, and a bulletin on the subject issued, sometime in
August of 1909? A. Yes. There were several bulletins is-
sued, concerning the return of films, subsequent to the or-
ganization of the Patents Company. I do not recall the
exact contents of the bulletin of August, referred to.

- Q. I show you Exchange Bulletin No. 12, dated August
21, 1909, and ask you if that is a bulletin sent out by the
Motion Picture Patents Company, to the licensed rental
exchanges? A. This is a copy of a bulletin issued by the
4 Patents Company, on 21st of August, 1909, relating to the
return of films.

Mr. KINGSLEY: I offer it in evidence.

The Exchange Bulletin offered in evidence is
marked "Defendants' Exhibit No. 41," and is as
follows:

Defendants' Exhibit No. 41.

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Exchange Bulletin—No. 12.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City.

August 21, 1909.

RETURN OF FILM.

The terms of the exchange license agreement between you 2
and this Company, require you to return to each of the film
manufacturers and importers on September 1, 1909, a quan-
tity of film equal to the quantity that you leased from the
manufacturer or importer during the month of February,
1909, and that none of the film returned shall be more than
twelve months old.

The license agreements between the film manufacturers
and importers and this Company, contain similar require-
ments relating to the return of film.

To enable exchanges to obtain twelve months' use of the 3
most desirable films that they leased from manufacturers and
importers under the existing exchange license agreement, we
have, for the present, authorized each manufacturer and im-
porter to accept from each exchange, films of any make and
age, but the quantity of film sent to each manufacturer and
importer must not be less than the quantity that the ex-
change leased from the manufacturer or importer during
the month of February, 1909.

During September, 1909, we will not require exchanges
that were not in business before September 1, 1908, to return
any film to the manufacturers or importers.

If an exchange has lost any film by fire or otherwise since 4
February 1, 1909, and has supplied proof of such loss to the
manufacturer or importer of such film, within fourteen days
after the loss, the quantity of film so lost may be deducted
from the quantity that the exchange would be required to
return if such loss had not occurred.

Each manufacturer and importer will furnish to each
exchange, a statement showing the quantity of film that was
leased by the exchange from the manufacturer or importer
during the month of February, 1909.

from other licensed exchanges. We find that under our return proposition many exchanges that have been established a long time, and that have large quantities of old film, are able to make the required return of film from their oldest and most worthless stocks. We have heretofore permitted this to be done, because it has the desired effect of gradually getting old and worthless stock from the market, but at the same time the new exchange, as compared with its longer-established competitor, is placed at an unfair disadvantage. Until February 1st, 1910, we will permit any licensed exchange to purchase from another licensed exchange and return to the manufacturers an amount of film equal to that which the exchange would be required to return under our license agreements. It should, however, be distinctly understood that if any exchange takes advantage of this offer, the film that it purchases for return must have been sold prior to January 1st, 1909, for the reason that since that date all licensed film has been leased, and the title to the same is vested in the manufacturer, and no exchange has the right to sell the same.

Film purchased from one exchange by another exchange, for the purpose of return, must be shipped direct to the manufacturers by the exchange from which the film is purchased. The film and the bills of lading for the film so returned should be distinctly marked, so that the manufacturers will know to which exchange the film is to be credited. Film must not be shipped from one exchange to another exchange.

If any exchange purchases film for return from another exchange, the exchange that makes the purchase and the exchange that sells the film must send to this Company statements showing the amount of film purchased and the date of purchase, together with the names of the purchaser and the seller. If exchanges that desire to sell or purchase old film, for the purpose of return, will notify us, we will endeavor to put such exchanges into communication with each other.

Exchanges are warned that on and after February 1st, 1910, the requirements for the return of film will be strictly in accordance with the provisions of the license agreements.

1 By Mr. KINGSLEY:

Q. I show you Exchange Bulletin No. 36, under date of August 27th, 1912, and ask you if that is a bulletin, or a copy of a bulletin, sent out by the Motion Picture Patents Company to the licensed rental exchanges, on or about that date. A. It is.

Mr. KINGSLEY: I offer it in evidence.

2 The Exchange Bulletin offered in evidence is marked "Defendants' Exhibit No. 43," and is as follows:

Defendants' Exhibit No. 43.

Exchange Bulletin—No. 36.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

August 27th, 1912.

3 Pursuant to Paragraph 20 of your License Agreement, you are hereby notified that the Conditions of License have been changed, by the cancellation of Paragraph 9 thereof and the substitution therefor of the following:

4 9. The Licensee shall on the first day of every month return to each Licensed Manufacturer or Importer (without receiving any payment therefor, except that the said Licensed Manufacturer or Importer shall pay the transportation charges incident to the return of the same) a number of reels of positive motion pictures of approximately 1,000 feet in length and of the make of the said Licensed Manufacturer or Importer, equal to the number of reels of approximately 1,000 feet in length of licensed motion pictures leased from said Licensed Manufacturer or Importer during the seventh month preceding the day of each such return, with the exception, however, that where any such motion pictures are destroyed or lost in transportation or otherwise, and satisfactory proof is furnished, within fourteen (14) days after such de-

struction or loss, to the Licensed Manufacturer or Importer from whom such motion picture was leased, the Licensed Manufacturer or Importer shall deduct the reels so destroyed or lost from the number of reels to be returned. On the first day of each month the licensee shall forward to each Licensed Manufacturer or Importer, a statement of the names of the subjects and the number of reels of positive motion pictures returned on that day. 1

This change in the Conditions of License will become effective on the First day of October, 1912, and all motion pictures due to be returned to the Manufacturer or Importer on that day shall be returned and reported under and in accordance with the foregoing change in the conditions of your License. Please note that all returns must be of the Manufacturer's or Importer's own make or importation. 2

MOTION PICTURE PATENTS COMPANY,

By H. N. Marvin,
Vice-President.

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By Mr. KINGSLEY:

Q. Will you look at this bulletin, Mr. Marvin, so as to acquaint yourself with its contents? A. I have looked at it.

Q. Does the Bulletin No. 36, marked "Defendants' Exhibit No. 43," indicate the method now employed by the Patents Company with reference to the return of films? A. It does.

Q. Did the Motion Picture Patents Company send receipts for royalties to exhibitors? A. It did. 4

Q. How often were those receipts sent? A. Those receipts were sent out weekly.

Q. I show you a printed form on the back of a postal card, and under the headline "80 Fifth Avenue, New York City," and ask you if that is the printed form that was sent to exhibitors each week as a receipt for royalty? A. That is the form of receipt employed.

Mr. KINGSLEY: I offer it in evidence.

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The Form of Receipt offered in evidence is marked "Defendants' Exhibit No. 44," and is as follows:

Defendants' Exhibit No. 44.

80 Fifth Avenue
New York City

We acknowledge receipt of your Royalty for the week beginning _____ which was forwarded by your Exchange.

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MOTION PICTURE PATENTS COMPANY

By J. J. Kennedy, Treasurer

By Mr. KINGSLEY:

Q. I notice that at page 215 of the record, when Mr. Grosvenor was questioning you, that he asked you a question which contained this sentence: "Then as a means of improving the business, you wiped out all the rental exchanges, is that right?" And you answered: "No, we did not wipe out but very few of a large number." Do you mean by that, that you cancelled a number of the exchanges? A. In my answer to that question by the counsel for the Government, I adopted the expression used by the counsel for the Government, and the words "wiped out" should appear in quotation marks. My meaning was that we cancelled the licenses of a certain number of rental exchanges. We did not otherwise interfere with their business, and in many, and in perhaps all, instances, the exchanges continued in the business of subrenting motion pictures.

Q. What proportion of exhibitors' royalties were paid to the Patents Company licensees under the license agreement of December 18th, 1908? A. Twenty-four per cent. of the exhibitors' royalties collected by the Patents Company was paid to the licensees of the Patents Company other than the Biograph and Edison Companies.

Q. Can you tell us what was the gross amount of film royalties paid by the licensed producers of motion pictures, what was the amount of exhibitors' royalties that was distributed among them, and what was the net amount of

royalties they paid the Motion Picture Patents Company, in the years 1909, 1910, 1911, 1912 and 1913? A. I do not carry those figures in my head. 1

Q. Have you a statement which would refresh your memory? A. I have.

Q. Will you consult it? A. Do you wish me to give the figures?

Q. I want to ask you one more question. When does the fiscal year of the Patents Company end? A. June 20th.

Q. So that any statement that you may make with reference to 1913 will be for the fiscal year ending on June 20th, 1913? A. Yes. 2

Q. Was this statement which you are now examining prepared under your direction? A. Yes.

Q. And supervision? A. Yes.

Q. Do you know it to be correct? A. I believe it to be correct.

Mr. KINGSLEY: I offer it in evidence..

The statement offered in evidence is marked "Defendants' Exhibit No. 45," and is as follows:

Defendants' Exhibit No. 45. 3

ROYALTIES PAID ON MOTION PICTURE FILM, TO MOTION PICTURE PATENTS COMPANY BY LICENSED MANUFACTURERS AND IMPORTERS.

Fiscal year ending June 20.	Gross amount of royalty due from licensed manufacturers and importers on film.	24% of Exhibit- ors' royalties due by Patents Com- pany to licensed manufacturers and importers.	Net amount of royalties paid by licensed manufac- turers and im- porters to Pat- ents Company.
1909	\$104,558.30	\$40,454.33	\$64,103.97
1910	256,529.54	131,906.54	124,623.00
1911	309,744.33	134,108.99	175,635.34
1912	363,767.18	149,549.44	214,217.74
1913	294,853.61	161,874.79	132,978.82

By Mr. KINGSLEY:

Q. Does the last column of Defendant's Exhibit No. 45 4

- 1 indicate the amount of royalties paid by licensed producers of motion pictures in excess of their share of 24% of exhibitors' royalties which were distributed among them?
A. It does.

Q. And these amounts range from \$64,000 to \$132,000, in round numbers? A. They do.

- 2 Q. What was done with the money paid by the licensed producers of motion pictures to the Patents Company in excess of the amount that was paid to the said licensed producers in the form of exhibitors' royalties? A. Well, those moneys were used in the maintenance of the business of the Motion Picture Patents Company, and the remaining surplusage, if any, was divided between the Edison Company and the Biograph Company as revenues under their patents.

Q. In other words, the net amount was distributed to the stockholders? A. It was.

Q. Did the Motion Picture Patents Company prevent competition between rental exchanges? A. It did not.

- 3 Q. Does the Motion Picture Patents Company maintain a force of detectives to investigate conditions in the business? A. It does not.

Q. Has it ever done so? A. No.

Q. During the period from 1910 to January 1st, 1913, has the Patents Company had occasion to cancel exhibitors served by the Greater New York Film Rental Company? A. It has.

Q. And during the same period, has the Patents Company had occasion to cancel exhibitors served by the General Film Company's offices in New York City? A. It has.

- 4 Q. Were some of the exhibitors served by the Greater New York Film Rental Company, whose licenses were cancelled, subsequently reinstated? A. They were.

Q. Were some of the exhibitors served by the General Film Company in the City of New York whose licenses were cancelled, subsequently reinstated? A. They were.

Q. In reinstating these exhibitors, was any favoritism shown to the exhibitors served by the General Film Company? A. There was not.

Q. Was any discrimination displayed against the exhibitors served by the Greater New York Film Rental Company? A. There was not.

Q. Can you tell us how many exhibitors served by these two exchanges were cancelled during the period to which I have referred, and how many were reinstated? A. I have prepared a memorandum of those figures.

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Q. And is this memorandum an accurate one? A. It is.

Q. Prepared from the records of the Patents Company office? A. Yes.

Q. Have you it in your possession? A. I have.

Q. What does that memorandum show with reference to the number of cancellations of exhibitors served by the Greater New York Film Rental Company? A. This memorandum shows that during the period running from 1910 to 1913, the licenses of 44 exhibitors taking service from the Greater New York Film Rental Company in New York City and vicinity were cancelled. Of these 44 exhibitors, 15 were subsequently reinstated through application of the Greater New York Film Rental Company, and eleven were reinstated through application by the General Film Company. Eighteen had not then been reinstated. During that same period, the licenses of 83 exhibitors who were taking their service from the General Film Company, were cancelled. Of these, the licenses of 55 were subsequently reinstated, upon application of the General Film Company, and the licenses of ten were reinstated upon application of the Greater New York Film Rental Company. The license of one exhibitor was reinstated upon application of a rental exchange other than the Greater New York Film Rental Company and the General Film Company. The licenses of 17 have not been reinstated. This statement indicates that the number of the former customers of the Greater New York Film Rental Company who subsequently through the cancellation and reinstatement became customers of the General Film Company, was 11. It further shows that the number of customers who were lost to the General Film Company and gained by the Greater New York Film Rental Company through cancellation and reinstatement, was 10; so that during this period, the net loss of customers to the Greater New York Film Rental Company through the above described cancellation and reinstatement of license, was one customer.

2

3

4

Mr. KINGSLEY: I offer the statement in evidence.

- 1 The same is received in evidence and marked "Defendants' Exhibit No. 46," and is as follows:

Defendants' Exhibit No. 46.

SUMMARY.

Total Greater New York Film Rental Company's		
Customers cancelled from 1910 to 1913.		44
Reinstated and served by Greater New York		
Film Rental Company.....		15
2	Reinstated and served by General Film Com-	
	pany	11
		26
		—
	Still out	18
Total General Film Company's customers can-		
celled from 1910 to 1913.		83
Reinstated and served by General Film Com-		
pany		55
Reinstated and served by Greater New York		
Film Rental Company,.....		10
3	Reinstated and served by others than Greater	
	New York Film Rental Company and	
	General Film Company.....	1
		66
		—
	Still out	17
Customers lost to Greater New York Film Rental		
Company through cancellation and switching		
to General Film Company,.....		11
Customers gained by Greater New York Film		
Rental Company through being cancelled and		
switching to Greater New York Film Rental		
Company,		10
4		—
		—
Net loss in three years to		
Greater New York Film Rental Co. 1		

By Mr. KINGSLEY:

Q. Mr. Marvin, I show you Exhibit No. 3, attached to the petition in this case, and which is marked Petitioner's Ex-

hibit No. 6 in the action. Is that a copy of the license agreement entered into between the Biograph Company and the Motion Picture Patents Company on December 18th, 1908? It has been admitted in evidence by consent. A. Yes. 1

Q. Was that agreement at that time typical of the other license agreements made to the other licensees by the Patents Company? A. It was.

Q. Is that agreement or the others which were made at that time still in force? A. No. Those agreements are no longer in force.

Q. Were agreements made subsequently which superseded these agreements? A. There were. 2

Q. When were new agreements made between the Motion Picture Patents Company and the licensed producers of motion pictures? A. New agreements were made June 20th, 1912, differing somewhat from the former agreements, and again on June 20th, 1913, still further differing from the previous agreements.

Q. I show you a copy of a license agreement between the Motion Picture Patents Company and the Biograph Company, dated June 6th, 1912, and ask you if that agreement is a copy of the one entered into between the Biograph Company and the Motion Picture Patents Company on that date? A. This is a copy of the license agreement entered into between the Motion Picture Patents Company and the Biograph Company on the 6th of June, 1912, but this agreement did not go into effect until the 20th of June, 1912. 3

Q. And did it supersede the agreement of December 18th, 1908, between the same parties? A. It did.

Q. Was it typical of the other agreements executed at the same time between the Motion Picture Patents Company and the other licensed manufacturers and importers of motion pictures? A. Yes. 4

Mr. KINGSLEY: The defendants offer in evidence the license agreement, dated June 6, 1912, between Motion Picture Patents Company and Biograph Company, and it is stipulated by the attorneys for the respective parties that the respondent Motion Picture Patents Company's Exhibit 3, appearing at page 150 of the answer, may be used instead of the

1 original, upon affixing the signatures which appear
in the original.

Mr. GROSVENOR: To wit: Motion Picture Patents
Company, by H. N. Marvin, Vice-President; attest,
William Pelzer, Secretary. And Biograph Company,
by J. J. Kennedy, President; H. H. Breunner, Secre-
tary.

By Mr. KINGSLEY:

2 Q. I show you a license agreement dated June 20th, 1913,
between Motion Picture Patents Company and George
Kleine, executed "Motion Picture Patents Company, by H.
N. Marvin, President; attest, George F. Scull, Secretary,"
and "George Kleine, witness, Fred Hawley," and ask you
if that is the original license agreement entered into be-
tween the parties on June 20th, 1913? A. It is.

Q. And did this supersede the prior agreement made be-
tween the Motion Picture Patents Company and George
Kleine, dated June 6th, 1912? A. It did.

3 Q. Is this license agreement typical of the other license
agreements executed by the licensed manufacturers and im-
porters of motion pictures on June 20th, 1913? A. It is.

Q. Did all of the licensed manufacturers and importers
of motion pictures sign similar agreements on or about June
20th, 1913? A. They did.

Mr. KINGSLEY: I offer it in evidence.

The same is received in evidence and marked "De-
fendants' Exhibit No. 48," and the same is copied into
the record as follows; the original thereof, by con-
sent of counsel, being returned into the custody of
Mr. George F. Scull, subject to production if required.

4

Defendants' Exhibit No 48.

LICENSE AGREEMENT.

Dated June 20, 1913.

MOTION PICTURE PATENTS CO.

and

GEORGE KLEINE.

LICENSE AGREEMENT.

1. THIS AGREEMENT, made the 20th day of June,

1913, by and between Motion Picture Patents Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Orange, in said State, party of the first part (hereinafter referred to as the Licensor), and George Kleine, of Chicago, Illinois, party of the second part (hereinafter referred to as the Licensee), witnesseth that:

2. Whereas, the Licensor represents that it is organized to own, deal in and grant licenses under Letters Patent pertaining to the motion picture art, and that it is the owner of all the right, title and interest in and to the following United States Letters Patent, all relating to improvements in the motion picture art:

- No. 578,185, dated March 2, 1897, for Vitascope, granted to Thomas Armat;
- No. 580,749, dated April 13, 1897, for Vitascope, granted to Thomas Armat;
- No. 586,953, dated July 20, 1897, for Phantascope, granted to Charles F. Jenkins and Thomas Armat;
- No. 588,916, dated August 24, 1897, for Kinetoscope, granted to Charles M. Campbell, as the assignee of Willard G. Stewart and Ellis F. Frost;
- No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted to American Mutoscope Company as the assignee of Herman Casler;
- No. 673,329, dated April 30, 1901, for Kinetoscope, granted to The American Vitagraph Company as the assignee of Albert E. Smith;
- No. 673,992, dated May 14, 1901, for Vitascope, granted to Thomas Armat;
- No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony & Co. as assignee of Woodville Latham;
- No. 722,382, dated March 10, 1903, for Animated Picture Apparatus, granted to American Mutoscope & Biograph Company as the assignee of John A. Pross;
- No. 744,251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;
- No. 12,192, dated January 12, 1904, for Kinetoscopic Film, granted to Thomas A. Edison, the same being

- 1 based on letters patent numbered 589,168, dated August 31, 1897;
- No. 770,937, dated September 27, 1904, for Kinetoscope, granted the Vitagraph Company of America as the assignee of Albert E. Smith;
- No. 771,280, dated October 4, 1904, for Winding-Reel, granted Albert E. Smith;
- No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted The Vitagraph Company of America as the assignee of William Ellwood;
- 2 No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted The Vitagraph Company of America as the assignee of Albert E. Smith; and
- No. 13,329, dated December 5, 1911, for Kinetoscope granted to the Licensor as assignee, by mesne assignments of Thomas A. Edison, the same being also a reissue of letters patent No. 589,168, aforesaid, and for the invention set forth in a previous reissue thereof numbered 12,037, dated September 30, 1902;

- 3 and that there are no licenses, shop-rights or other rights outstanding, to any person, firm or corporation engaged in the business of manufacturing and selling or leasing motion pictures, to manufacture and sell or lease to others motion pictures embodying the inventions of said reissued letters patent No. 12,192, or to manufacture or use in carrying on such business cameras embodying the inventions of said reissued letters patent No. 13,329 and said letters patent Nos. 629,063 and 707,934, except as follows:

- 4 2a. A certain license granted under said reissued letters patent Nos. 12,037 and 12,192, by the Edison Manufacturing Company of Orange, New Jersey (predecessor in business of Thomas A. Edison, Incorporated, a corporation of New Jersey, of Orange, New Jersey, said Thomas A. Edison, Incorporated, being hereinafter referred to as the Edison Company), to Pathe Freres, of New York, under an agreement in writing between it and the latter, dated May 20, 1908, and taking effect June 20, 1908, and certain other licenses granted, under said reissued letters patent, by said Edison Manufacturing Company, to the Kalem Company, of New York, the Essanay Company, of

Chicago, Siegmund Lubin, of Philadelphia, Gaston Melies, 1
of New York (for himself and as attorney for George
Melies, of Paris, France), Selig Polyscope Company of
Chicago, and the Vitagraph Company of America, of New
York, under agreements in writing between said Edison
Manufacturing Company and said several licensees, dated
January 31, 1908; which said agreements, dated May 20,
1908, and January 31, 1908 (except that to which Gaston
Melies was a party), were suspended by the parties there-
to in and by the license agreements next referred to to
which said licensees (or their successors) were parties, in 2
the same manner as hereinafter provided for in paragraph
34; and

2b. Certain licenses granted, under said reissued letters
patent Nos. 12,037 and 12,192, and said letters patent No.
629,063, and 707,934, by the Licensor, to Thomas A. Edi-
son, Inc., aforesaid, Biograph Company, of New Jersey,
Essanay Film Manufacturing Company, of Illinois, Kalem
Company aforesaid, Lubin Manufacturing Company, of
Pennsylvania (successor to Siegmund Lubin, aforesaid),
Pathe Freres aforesaid, Selig Polyscope Company afore- 3
said, and Vitagraph Company of America aforesaid, under
agreements in writing between the Licensor and said sev-
eral licensees dated June 6, 1912, at which time a certain
license was also granted by the Licensor, under said re-
issued letters patent No. 12,192, to George Kleine, of Chicago,
which, however, did not include the right to manufacture
negative motion pictures nor the right to manufacture
or use such cameras as aforesaid, and also a license to
Gaston Melies (for himself and as attorney for George
Melies, of Paris, France), dated June 6, 1912, which was
modified by an agreement dated February 26, 1913, and 4
to Geo. Kleine Film Company of Illinois, dated February
1, 1913; and

3. Whereas, the operation of the said license agreements
referred to in Paragraph 2a of this agreement (except that
to which George Melies was a party) was suspended by
the parties thereto; and

4. Whereas, the Licensor and the Licensee are desirous
of terminating the license agreement, between the Licensor

- 1 and the Licensee, referred to in paragraph 2b, together with any and all agreements modifying the same; and

2 5. Whereas, the Licensee is engaged in the manufacture, sale and leasing of motion pictures, including the printing of positive motion pictures from negative motion pictures and, relying upon the aforesaid representations of the Licensor and induced thereby, desires to obtain from the Licensor a license under said two reissued Letters Patent numbered 13,329 and 12,192, and Letters Patent No. 629,063 and to lease positive motion pictures, for use in
3 exhibiting or projecting machines containing the inventions, or any of them described and claimed in said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and to sell or lease positive motion pictures on film of a width approximately ($1\frac{1}{8}$) inch or less in certain territory and on film of any width in certain territory:

3 6. Now, therefore, the parties hereto, for and in consideration of the sum of One Dollar to each in hand paid by the other, and for other good and valuable considerations from each to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

4 7. The Licensor hereby grants to the Licensee, for the term and subject to the covenants, conditions and stipulations hereinafter expressed, the right and license under said reissued Letters Patent No. 13,329 and Letters Patent No. 629,063, for the United States, its territories, dependencies and possessions (hereinafter called the "territory aforesaid") to manufacture and use such a number of cameras embodying the inventions of said reissued Letters Patent No. 13,329 and Letters Patent No. 629,063, as may be necessary for the proper conduct of the Licensee's business, and to manufacture, print and produce or acquire negative and positive motion pictures embodying the inventions of said reissued Letters Patent No. 12,192, and to lease the same in the United States, its territories, dependencies and possessions (with the exceptions of its insular possessions and Alaska), hereinafter referred to as "lease territory aforesaid," on film of a greater width than

approximately one and one-eighth ($1\frac{1}{8}$) inch, upon condition that they shall not be used in exhibiting or projecting machines containing the inventions or some of them of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, and not licensed by the Licensor, and to sell or lease positive motion pictures embodying the invention of said reissued Letters Patent No. 12,192, on film of a width approximately one and one-eighth ($1\frac{1}{8}$) inch or less in the "lease territory aforesaid" and on film of any width in or for use in said insular possessions and Alaska and foreign countries, hereinafter referred to as "said export territory;" shipments thereto and sales and leases therefor being hereinafter referred to as "for export."

The license hereby granted is personal to the Licensee and does not include the right to dispose of, in the "territory aforesaid," and cameras embodying any invention covered by said reissued Letters Patent No. 13,329 and Letters Patent No. 629,063; and, in the event of the Licensee's permanent discontinuance of business or retirement therefrom for a period of six consecutive months, the license hereby granted shall be immediately terminated.

8. The Licensor, for itself, its successors, assigns and legal representatives, hereby releases, acquits and discharges the Licensee from any and all claims, demands and liability for profits and damages, because of any infringement by the Licensee of any or all of the aforesaid United States Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 629,063, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and reissued Letters Patent Nos. 13,329 and 12,192, or use by the Licensee of the inventions, or any of them, covered by said Letters Patent or either of them prior to the date hereof.

9. The Licensee hereby recognizes and admits the validity of said reissued Letters Patent No. 13,329, and of the validity of said reissued Letters Patent No. 12,192 and Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 629,063, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, and agrees not to contest or question the same during the continuance of this agreement.

1 10. The Licensee further covenants and agrees that
the Licensee will, within fifteen (15) days after the twenty-
th (20th) day of each month after this agreement takes
effect, and during its continuance, submit a statement in
writing, signed by the proper officer of the Licensee, and
sworn to if requested by the Licensor, showing the total
number of running feet of new subjects listed and offered
for lease or used for profit by it, in the "lease territory
aforesaid" during the period from the twentieth (20th)
day of the preceding calendar month to the twentieth (20th)
2 day of the month for which such statement is submitted,
and will at the same time pay to the Licensor a royalty
of one cent (1c.) per running foot on such total number
of running feet of new subjects. The Licensee further
covenants and agrees to keep correct books of account and
to permit the Licensor to determine, by examination there-
of, at all reasonable times and through any reputable
chartered accountants to be selected by the Licensor, the
number of running feet of new subjects so listed and leased
or used for profit by the Licensee while this agreement
is in effect, if the Licensor should so desire.

3 12. The Licensor and Licensee further mutually cove-
nant and agree that the Licensor may charge royalties or
rents for the use of all exhibiting or projecting machines
capable of exhibiting or projecting motion pictures on film
of a width greater than approximately one and one-eighth
(1 $\frac{1}{8}$) inch, containing the inventions, or any of them, de-
scribed and claimed in the aforesaid Letters Patent Nos.
578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,-
934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,-
237, licensed by the Licensor and that all such royalties
4 or rents shall be collected by the Licensor, directly or in-
directly, from the exhibitors using such machines, and
shall be fixed by the Licensor and charged to and so col-
lected from such exhibitors by the Licensor at such a rate
as to average as nearly as possible a royalty or rental
of Ninety Cents (90c.) per week for each such licensed
machine in use; and that the Licensor shall, upon the re-
quest of any of its licensees or of any user of such pro-
jecting machine, license the use of any projecting machine
containing the inventions, or some of them, of said Letters

Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, manufactured and sold under the license of the Licensor upon the conditions, (1) that said machines shall be used solely for exhibiting or projecting motion pictures containing the inventions of said reissue Letters Patent No. 12,192, licensed by the Licensor, while it owns or controls the Letters Patent under which such machine is licensed; and (2) upon other terms to be fixed by the Licensor while in use and while the Letters Patent under which it is licensed are owned or controlled by the Licensor (which other terms shall only be the payment of a royalty or rental to the Licensor while in use and which royalty or rental during the continuance of this agreement shall not be more than Ninety Cents (90c.) per week); and that the Licensor shall not during the continuance of this agreement cancel the license for the use of any such projecting machine because of a violation of Condition (1) hereof until a court of competent jurisdiction shall have restrained the unlawful use of such projecting machine.

14. The Licensee further covenants and agrees to mark each and every camera which the Licensee may make or use under this agreement embodying the inventions of reissued Letters Patent No. 13,329, and Letters Patent No. 629,063, or any of them, with the word "Patented" followed by the dates of grant of all of the said Letters Patent the inventions claimed in which are embodied in the said camera or apparatus, and to photographically print the Licensee's trade mark on the title of each positive motion picture on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch leased by the Licensee in the "lease territory aforesaid," and to mark conspicuously on the labels which shall be placed on boxes or packages containing positive motion pictures on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch leased by the Licensee in the "lease territory aforesaid," under this license, the following words and figures:

1

Licensed Motion Picture.

Leased by and Property of

(Patented in the United States August 31, 1897;
reissued January 12, 1904).

The enclosed motion picture is leased only and
upon the following terms and conditions:—

2

1. That the lessee shall not sell or otherwise dis-
pose of the same outright, but shall have only the
right to sub-let or use such motion picture.

2. That the lessee shall not permit such motion
picture to be exhibited on projecting machines con-
taining the inventions, or some of them, of Letters
Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,-
329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,-
280, 785,205, and 785,237, and not licensed by the
Motion Picture Patents Company of New Jersey.

3

3. That the lessee shall not have the right to sublet
such motion picture for use on projecting machines
containing the inventions, or some of them, of Letters
Patent Nos. 578,185 580,749, 586,953, 588,916, 673,329,
673,992, 707,934, 722,382, 744,251, 770,937, 771,280,
785,205, and 785,237, until such lessee has en-
tered into an agreement in writing with the Motion
Picture Patents Company containing terms and con-
ditions to be prescribed therein by it, and only
while such lessee complies with all such terms and
conditions and while such agreement remains in full
force and effect.

4

4. That the lessee or user thereof shall not make
or permit others to make any reproduction common-
ly known as a "dupe," of such motion picture.

5. That the lessee or user thereof shall not re-
move the trademark or trade name or title there-
from.

6. That the violation of any of the foregoing con-

ditions, including the terms and conditions of the agreement referred to in 3, entitles the lessor to immediate possession of this motion picture without liability for any price which the lessee or the person in whose possession it is found, may have paid therefor. 1

15. The Licensee further covenants and agrees not to use, without the consent in writing of the Licensor, in the production of negative or positive motion pictures, under this agreement, reproductions commonly known as "dupes" of the negative or positive motion pictures of any other manufacturer or person, firm or corporation. 2

16. The Licensor has established the following scale of minimum prices (which the Licensee admits is a fair and reasonable one) for the lease of positive motion pictures on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch in the "lease territory aforesaid," embodying the invention of said reissued Letters Patent No. 12,192, when leased for the purpose of sub-leasing for use on projecting machines containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237: 3

List	11 cents per running foot.	
Topical Pictures	9 " per running foot.	
Films leased between two and four months after re- lease date	9 " per running foot.	
Films leased between four and six months after re- lease date	7 " per running foot.	4
Films leased after six months after release date..	any price.	

A rebate of 10 per cent. may be allowed on all of the above prices; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November and January, on all motion pictures leased during the two months preceding each said period, provided all the

- 1 terms and conditions of the agreement referred to in
clause (3) of paragraph 24 have been faithfully ob-
served.

2 The Licensor and Licensee further mutually covenant
and agree that the Licensor shall fix and determine the min-
imum lease prices at which such motion pictures shall
be leased by the Licensee in the "lease territory aforesaid,"
under this license and shall change such scale of minimum
prices from time to time as in its judgment market condi-
tions may require; and the Licensee further agrees that
any changes which may hereafter be made in said scale
of prices, and of which the Licensee shall be notified in
writing by the Licensor, shall be accepted and adopted by
the Licensee in the place and stead of the scale of prices
above given or of any substitute or substitutes therefor
adopted prior to such change; each such notice to be
given to the Licensee at least three weeks in advance of the
change to be made.

- 3 18. The Licensor and Licensee further mutually cove-
nant and agree that such positive motion pictures made
by or for the Licensee, and not leased or sold prior to
June 20, 1913, shall be subject to the scale of prices afore-
said, and shall be leased in the "lease territory aforesaid,"
under this license, at not less than the prices fixed in said
scale for positive motion pictures as provided for in Para-
graph 16.

- 4 20. The Licensee further covenants and agrees not to
lease such motion pictures for the purpose of such subleas-
ing in the "lease territory aforesaid," under any circumstan-
ces, either directly or indirectly, during the continuance of
this agreement, at lower prices than those fixed and estab-
lished as provided for in Paragraph 16.

21. It is further mutually covenanted and agreed by the
Licensor and Licensee that the Licensee shall have the
right to sell or otherwise dispose of motion pictures in or
for "said export territory," and that the prices above re-
ferred to in Paragraph 16, or any substitute or substi-
tutes for the same hereafter adopted by the Licensor, shall
not apply to sales or shipments of motion pictures made

bona fide for export, when the goods, addressed to the purchaser, agent or consignee, are delivered to the vessel or to a transportation company for transportation to "said export territory," and not otherwise. 1

23. The Licensor and the Licensee further mutually covenant and agree that in the "lease territory aforesaid," all leases of positive motion pictures by the Licensee for the purpose of such subleasing shall be at the prices hereinbefore provided for, without the allowance of any discounts or rebates or other reduction by which such a lessee might acquire positive motion pictures at lower prices than those set forth in Paragraph 16, or any substitutes therefor hereafter adopted by the Licensor. 2

The Licensee further covenants and agrees that, in the "lease territory aforesaid," the Licensee will not sell or offer for sale other goods or merchandise at less than current prices in order to induce the lease of positive motion pictures, for the purpose of such subleasing nor present or donate other goods or merchandise or prizes, or make use of credit cards or trading stamps, or offer any premiums of any kind whatsoever to induce such lease of such positive motion pictures. 3

24. It is further mutually covenanted and agreed by and between the Licensor and Licensee that no lease under this license of positive motion pictures, on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch, shall be made in the "lease territory aforesaid" by the Licensee, except upon and subject to the following terms and conditions, the substance of which (with the exception of the conditions as to the return of positive motion pictures hereinafter referred to) shall be expressed in a printed notice on the labels, as provided for in Paragraph 14, accompanying each such positive motion picture, namely 4

(1) that the lessee of such positive motion picture shall not sell or otherwise dispose of the same outright, and shall not have the right to use or sub-lease for use such positive motion picture in giving motion picture exhibitions in machines containing the inventions or some of them of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, not licensed by the Licensor;

- 1 and (2) that the lessee shall not make or permit others
to make any reproduction commonly known as a "dupe"
of such positive motion picture and (3) that the lessee
shall not sub-lease the same for use on projecting machines
containing the inventions, or some of them, of Letters
Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329,
673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,-
205 and 785,237, until such lessee has entered into an
agreement in writing with the Licensor containing terms
and conditions to be prescribed therein by it, and only
2 while such lessee complies with all such terms and condi-
tions and while such agreement remains in full force and
effect; and (4) that the lessee of such positive motion pic-
ture shall not remove the trade-mark or trade name or title
therefrom; and (5) that if the lessee sub-leases motion
pictures as provided in (3) hereof, he shall return to the
Licensee (without any payment therefor except the trans-
portation charges incident to the return of the same) on
the first day of every month, beginning with July, 1913,
an amount in running feet of positive motion pictures (on
film of a greater width than approximately one and one-
eighth ($1\frac{1}{8}$) inch) of the make of the Licensee equal to
3 ninety (90) per cent. of the amount that was so leased
during the seventh month preceding the date of each such
return, with the exception, however, that where any such
positive motion pictures are destroyed by fire or lost
in transportation, and proof satisfactory to the Licensee is
furnished as to such destruction or loss, the amount so
destroyed or lost shall be deducted from the amount to be
returned as aforesaid; and (6) that the violation of any of
the foregoing conditions, including the terms and condi-
tions of the agreement referred to in condition (3) above,
4 entitles the lessor to immediate possession of such motion
picture without liability for any price which the lessee, or
the person in whose possession it is found, may have paid
therefor.

25. The Licensor and the Licensee further mutually covenant and agree that the Licensee shall not have the right under this license to supply motion pictures to any one who uses said motion pictures or sublets them for use, in the "lease territory aforesaid," on projecting machines containing the inventions, or some of them, of said

Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and not licensed by the Licensor. 1

It is further mutually understood and agreed that the Licensee shall have the right to use, without payment of royalty therefor, motion picture projecting machines containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237 in testing, and in exhibiting to possible or prospective lessees or purchasers, positive motion pictures in connection with the Licensee's manufacture thereof, but not for the purpose of giving exhibitions thereof for profit. 2

27. It is mutually covenanted and agreed by and between the Licensor and Licensee that the Licensor may grant other licenses under said reissued Letters Patent Nos. 13,329 and 12,192, and said Letters Patent No. 629,063, said licenses to be in writing and not to exceed ten in number, and to be to the persons and corporations (or their successors in business) mentioned in Paragraph 2b as having license agreements with the Licensor and the Kinemacolor Company of America (except by a majority vote of the Licensee and the nine other licensees, other than the said Kinemacolor Company, or such of them as may at the time be licensees, on the basis of one vote for each thousand running feet of new subjects, on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch, offered for lease or sale in the "territory aforesaid" by such licensees during the year preceding the taking of such vote), and not to be granted or continued upon terms, conditions or stipulations which are in any respect more favorable to the licensees named therein than those set forth in this agreement, (except to the Edison Company, and the latter shall only be more favorable to it in the matter of the payment of royalties to the Licensor), provided, however, (a) that if any of such additional nine licenses, other than that to said Kinemacolor Company, should be terminated, during the continuance of this agreement, then and in each such case, the Licensor may grant a license in writing to some other motion picture manufacturer, but not on terms, conditions or stipulations which are more favorable as to such new license than 3 4

- 1 those set forth in this agreement; (b) that the Licensor
may continue in the Eastman Kordak Company, a New
York Corporation, for the term of said Reissued Letters
Patent No. 13,329 and said Letters Patent No. 629,063,
the right with which said Eastman Kodak Company is
now vested by the Licensor, under said Letters Patent, to
use such motion picture cameras as it may desire for its
own use, including film testing; and (c) that the Li-
censor may, if requested so to do by the Licensee, or any of
the additional ten (10) licensees aforesaid, grant licenses
2 in writing to individuals to use motion picture cameras
embodying the inventions of said reissued Letters Patent
No. 13,329 and said Letters Patents No. 629,063, such
cameras to be leased by the Licensee or one of the said
additional ten (10) licensees aforesaid by a non-transfer-
able lease in writing in a form to be approved by the
Licensor, and such cameras to be used by the individuals
so licensed in making negatives which (or copies of
which) are to be used by the Licensee or one of the other
ten (10) licensees aforesaid in the production of positive
motion pictures to be leased or sold by the Licensee or
3 one of the other ten (10) licensees in the "lease terri-
tory aforesaid" or in Canada.

By the expression "running feet of new subjects" as
used in this agreement, the parties hereto agree, is meant
the aggregate amount ascertained by adding together the
individual number of running feet of one print of each
and every new motion picture on film of a greater width
than approximately one and one-eighth ($1\frac{1}{8}$) inch, regu-
larly listed and offered for lease in the "lease territory
aforesaid" or used for profit in said "lease territory afore-
said."

- 4 28. It is further mutually covenanted and agreed by
and between the Licensor and the Licensee that the Li-
censor will, during the continuance of this agreement,
license such a number of persons, firms or corporations
under said Letters Patent, Nos. 578,185, 580,749, 586,953,
588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,-
937, 771,280, 785,205 and 785,237, to make and sell ex-
hibiting or projecting machines containing the inventions
described and claimed in the same, capable of exhibiting
or projecting motion pictures on film of a width greater

than approximately one and one-eighth ($1\frac{1}{8}$) inch, and also such machines not capable of exhibiting or projecting motion pictures on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch, as will be able to supply the demand for the same.

The Licensor further covenants and agrees that it will not charge any such person, firm or corporation manufacturing and selling any such machine capable of exhibiting or projecting motion pictures on a film of a width greater than approximately one and one-eighth ($1\frac{1}{8}$) inch, more than Five Dollars (\$5.00), as a license fee for the sale of each such exhibiting or projecting machine sold by any such person, firm or corporation.

The Licensor further covenants and agrees that it will grant a license to the Licensee, upon his request, to manufacture and sell exhibiting or projecting machines under the Letters Patent referred to, and upon the condition as to the payment of the license fees or royalties and other conditions and restrictions, and will not grant licenses thereunder to others on any more favorable terms or conditions, except the Biograph Company aforesaid, which is not to pay any such license fees or royalties; and will also grant a license to the Licensee to make and sell exhibiting or projecting machines under any other Letters Patent and containing the inventions described and claimed therein that the Licensor may hereafter acquire or control, upon the payment of additional license fees or royalties to be fixed by the Licensor, and subject to similar conditions and restrictions and the placing upon the machines of plates containing such conditions and restrictions as are fixed by the Licensor, and that it will not grant such licenses to others on any more favorable terms or conditions.

The Licensor further covenants and agrees that it will, on request of the Licensee, enter into an agreement with the Licensee giving the Licensee the right to sublet motion pictures (from as many distributing points as the Licensee may desire) for use on projecting machines containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, on terms and conditions to be prescribed by the Licensor, which terms and conditions shall be at least as

- 1 favorable to the Licensee as are the terms and conditions of any license covering the sub-leasing of motion pictures granted by the Licensor.

31. The Licensor and Licensee further mutually covenant and agree that by the expression "motion pictures" as used in this agreement, is meant transparent or translucent tape-like film having photographs thereon of objects in motion, embodying the inventions in said reissue No. 12,192.

- 2 32. It is further mutually covenanted and agreed by and between the Licensor and Licensee that unless sooner terminated, as hereinbefore or hereinafter provided, this agreement and the license granted thereby shall take effect June 20, 1913, and shall continue until August 31, 1914, but that the Licensee may renew this agreement and license thereafter for another term ending June 20, 1915, upon the same terms, conditions and stipulations as herein provided, by giving notice to the Licensor on or before July 20, 1914, of the Licensee's election to so renew this agreement and license, and upon the giving of such notice this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for another term, ending June 20, 1915, and that the Licensee may again renew this agreement and license, from year to year upon the same terms, conditions and stipulations as herein provided, but only during the period from June 20th, 1915, to August 26th, 1919, the date of expiration of the Letters Patent No. 707,934, by giving notice to the Licensor on or before May 20 of each year of the Licensee's election to so renew this agreement and license, and on the giving of such notice, this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for the year for which such notice was given.

33. It is further mutually covenanted and agreed by and between the Licensor and Licensee that if, during said original term or during any such renewal period, either party should knowingly or through gross neglect or carelessness, be guilty of a breach, violation or non-performance of its covenants, conditions and stipulations, resulting in

substantial injury to the other party, and should, for the period of forty (40) days after notice thereof from the other party, persist therein or fail to correct, repair or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do. It is, however, mutually covenanted and agreed by and between the Licensor and Licensee that if the guilty party should correct, repair or remedy such breach, violation or non-performance of its covenants, conditions and stipulations within the said period of forty (40) days after such notice, and should, thereafter knowingly or through gross neglect or carelessness be guilty of a second breach, violation or non-performance of its covenants, conditions and stipulations, resulting in substantial injury to the other party, then and in such case, the party aggrieved may terminate this agreement by giving thirty (30) days' notice in writing to the guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damages because of any such breach, violation or non-performance by the other party hereto.

35. It is further mutually covenanted and agreed by and between the Licensor and the Licensee that the agreement between the Licensor and the Licensee, referred to in paragraph 2b, together with any and all agreements modifying the same, be and the same hereby is terminated as of June 19, 1913.

36. All notices provided for in this agreement shall be in writing and shall be given by delivering the same to the Licensor or Licensee, as the case may be, or to an officer of the Licensor or Licensee, as the case may be, or by depositing such notice, postage prepaid, in any Post-office of the United States, in a sealed envelope directed to the Licensor or the Licensee, as the case may be, at its last known Post-office address, to be forwarded by registered mail.

37. It is mutually covenanted and agreed by and between the Licensor and Licensee that after notice of the termination of this agreement and the license granted

1 thereby by either party, as provided for in Paragraph 33,
and after the same have been terminated, no matter what
the cause or manner of termination may be, neither this
license agreement nor the fact that the Licensee has
entered into or acted under it, shall be used in any
manner, directly or indirectly, by or for the Licensor, its
successors, assigns or legal representatives, or by or
for others with its or their consent or permission, against
the Licensee, or the Licensee's successors or legal repre-
sentatives, in any litigation, controversy or proceeding in-
volving the Licensee or them or any other persons, firms
2 or corporations, or in any other way; it being understood
and agreed that upon such termination the positions and
rights of the Licensor and Licensee shall be the same as
if this agreement had not been made; provided, however,
that the rights of neither party shall be prejudiced by such
termination in the recovery of damages for any breach
or other violation of this agreement by the other occurring
prior to such termination.

3 In witness whereof, the parties hereto have caused this
agreement to be executed by their officers duly authorized
to perform these acts, the day and year first above written;
it being noted that it contains no paragraphs numbered 11,
13, 17, 19, 22, 26, 29, 30 and 34.

MOTION PICTURE PATENTS COMPANY,

By

[SEAL.]

H. N. Marvin,
President.
George Kleine.

Attest:

George F. Scull,
Secretary.

4 Witness:

Fred. Hawley.

By Mr. KINGSLEY:

Q. I show you a copy of a supplemental license agreement between Motion Picture Patents Company and American Mutoscope & Biograph Company, dated January 26, 1909, and ask you if that was executed by the Motion Picture Patents Company and by the Biograph Company? A. It was.

Q. Was a similar supplemental license agreement made between the Motion Picture Patents Company and the other licensed manufacturers and importers of motion pictures, on or about January 26, 1909? A. Yes. 1

Q. Is this supplemental license agreement which you have just identified made between the Motion Picture Patents Company and the Biograph Company on the 26th day of January, 1909, typical of the other supplemental license agreements made between the Motion Picture Patents Company and the other licensed manufacturers and importers of motion pictures? A. It is. 2

Mr. KINGSLEY: I offer it in evidence.

The same is received in evidence and marked "Defendants' Exhibit No. 49," and it is stipulated by the attorneys for the respective parties that respondent Motion Picture Patents Company's Exhibit No. 2, appearing at page 144 of the answer, may be used instead of the original upon affixing the signatures that appear in the original, the same being executed: "Motion Picture Patents Company, by Frank L. Dyer, President; attest, George F. Scull, Secretary; American Mutoscope & Biograph Company, by J. J. Kennedy, President; attest, H. H. Breunner, Secretary." 3

By Mr. KINGSLEY:

Q. Is this supplemental license agreement now in force? A. It is not.

Q. Has it been in force since June 20th, 1912? A. It has not.

Q. I show you, at page 36 of the printed record in this case, Petitioner's Exhibit No. 8, and ask you if that contains a copy of the original rental exchange license issued by the Motion Picture Patents Company to the rental exchanges in 1909? A. It does. 4

Q. How long was the form of rental exchange license to which I have called your attention, in use by the Motion Picture Patents Company? A. Until about June 20th, 1913.

Q. Was it then superseded by a new form adopted by the Motion Picture Patents Company? A. It was.

Q. I show you a form of agreement endorsed "Exchange License Agreement between Motion Picture Patents Com-

- 1 pany and (blank)," and bearing date, "1913" and ask you if that is the form of license agreement adopted by the Motion Picture Patents Company in June, 1913, and superseding the form of license agreement to rental exchanges to which I have called your attention? A. It is.

Mr. KINGSLEY: I offer it in evidence.

The same is received in evidence and marked "Defendants' Exhibit No. 50," and is as follows:

Defendants' Exhibit No. 50.

2

EXCHANGE

LICENSE AGREEMENT

Between

MOTION PICTURE PATENTS COMPANY

and

1913.

3

EXCHANGE LICENSE AGREEMENT.

Whereas, the Motion Picture Patents Company of New York City (hereinafter referred to as the "Licensor") is the owner of all the right, title and interest in and to reissued Letters Patent No. 12,192, dated January 12, 1904, granted to Thomas A. Edison, for Kinetoscopic Film, and also Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, for inventions relating to motion picture projecting machines; and

4

Whereas, the Licensor has licensed the Biograph Company of New York City, Thomas A. Edison, Inc., of Orange, New Jersey; the Essanay Company of Chicago; the Kalem Company of New York City; George Kleine of Chicago; Lubin Manufacturing Company of Philadelphia; G. Melies of New York City; Pathe Freres of New York City; the Selig Polyscope Company of Chicago; and The Vitagraph Company of America, of New York City (hereinafter referred to as "Licensed Manufacturers and Importers"), to manufacture and import motion pictures embodying the

inventions of said reissued Letters Patent and to lease licensed motion pictures (hereinafter referred to as "Licensed Motion Pictures") for use on projecting machines licensed by the Licensor; and

Whereas, the undersigned (hereinafter referred to as the "Licensee") desires to obtain a license under said Letters Patents to sub-let the said licensed motion pictures for use on projecting machines licensed by the Licensor;

Now, therefore, the parties hereto, in consideration of the covenants herein, have agreed as follows:

(1) The Licensor hereby grants to the Licensee for the term and subject to the conditions expressed in the "Conditions of License" hereinafter set forth, the license, under the said Letters Patent to sub-lease said licensed motion pictures for use only on projecting machines licensed by the Licensor under Letters Patent owned by it.

(2) The Licensee covenants and agrees to conform with and strictly adhere to and be bound by all of the "Conditions of License," hereinafter set forth, and to and by any and all future changes in or additions thereto, and further agrees not to do or suffer any of the acts or things thereby prohibited; and the Licensee further agrees that the signing of this agreement constitutes a cancellation of any or all agreements for the sale of licensed motion pictures made prior to this agreement by and between the Licensee and any or all licensed manufacturers or importers, and a cancellation of any license agreement under said Letters Patent heretofore entered into by and between the Licensor and the Licensee, except as to any clause in said agreements relating to the return of motion picture film to the several licensed manufacturers or importers. It is further understood and agreed by the Licensee that the license hereby granted is a personal one and not transferable or assignable, and the Licensee hereby recognizes and acknowledges the validity of the said Letters Patent.

CONDITIONS OF LICENSE.

1. From the date of this agreement the Licensee shall not use or permit the use of any motion pictures owned or leased by the Licensee, on any motion picture projecting machine

1 containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237 not licensed by the Licensor.

2 2. The ownership of each licensed motion picture leased under this agreement shall remain in the Licensed Manufacturer or Importer from whom it may have been leased, the Licensee, by the payment of the leasing price acquiring only the license to use and sub-let such motion picture subject to the conditions of this agreement. Such license for
3 any motion picture shall terminate upon the breach of this agreement in regard thereto, and the Licensed Manufacturer or Importer from whom it may have been leased, shall have the right to immediate possession of such motion picture, without liability for any leasing price or other sum, which the Licensee, or the person in whose possession said motion picture is found, may have paid therefor.

3 3. The Licensee shall return to each Licensed Manufacturer or Importer (without receiving any payment therefor, except that the said Licensed Manufacturer or Importer shall pay the transportation charges incident to the return of the same) on the first day of every month commencing seven months from the first day of the month on which this agreement is executed, an equivalent amount of licensed positive motion picture film in running feet and of the make of the said Licensed Manufacturer or Importer, equal to the amount of licensed motion pictures that was so leased during the seventh month preceding the day of each such return, with the exception, however, that where any such motion pictures are destroyed or lost in transportation or otherwise, and satisfactory proof is furnished, within fourteen
4 (14) days after such destruction or loss, to the Licensed Manufacturer or Importer from whom such motion picture was leased, the Licensed Manufacturer or Importer shall deduct the amount so destroyed or lost from the amount to be returned.

4. The Licensee shall collect directly or indirectly from the user of each projecting machine licensed for use by the Licensor under said patents, and pay to the Licensor a roy-

alty of Ninety Cents (90c.) per week while the user of such projecting machine uses such machine with motion pictures supplied by the Licensee; and the Licensee shall not sub-lease any licensed motion pictures for use on any projecting machine containing the inventions, or some of them, of Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, not licensed by the Licensor, or for the use of which the royalty fixed by the Licensor has not been paid to the Licensor; and the Licensor agrees that it will license the use of any projecting machine containing the inventions of the above patents or some of them, manufactured and sold under the license of the Licensor, upon terms and conditions to be fixed by the Licensor, including the payment to the Licensor of a weekly royalty or rent of Ninety Cents (90c.) while such projecting machine is in use.

5. This agreement shall extend only to the place of business for the sub-leasing of motion pictures maintained by the Licensee in the City for which this agreement is signed, and the Licensee agrees not to establish or maintain a place of business for the sub-leasing of licensed motion pictures, or from which licensed motion pictures are delivered to exhibitors, in any other City, unless an agreement for such other City, similar to the present agreement, is first entered into by and between the Licensee and the Licensor.

6. The Licensor agrees that before licensing any person, firm or corporation in the United States (not including its insular territorial possessions and Alaska) to sub-lease licensed motion pictures, it will exact from each licensee an agreement similar in terms to the present agreement.

7. It is understood and specifically covenanted by the Licensee, that the Licensor may terminate this agreement on fourteen (14) days' written notice to the Licensee of its intention so to do, and that if the Licensee shall fail to faithfully keep and perform the foregoing terms and conditions of lease, or any of them, the Licensor shall also have the right in such case, upon appropriate notice to the Licensee, to immediately terminate the present license, if the Licensor shall so elect, without prejudice to the Licensor's right to sue for and recover any damages which may have been suf-

1 fered by such breach or non-compliance with the terms and conditions hereof by the Licensee, such breach or non-compliance constituting an infringement of said Letters Patent, or some of them.

8. It is understood and agreed that the terms and conditions of this license may be changed by the Licensor upon fourteen (14) days' written notice to the Licensee.

MOTION PICTURE PATENTS COMPANY

By

2
President.

LICENSEE'S SIGNATURE.....

Place of business for which this license is granted

Street and No.....

City.....State.....

Date.....

3 By Mr. KINGSLEY:

Q. Is the form of exchange license agreement between Motion Picture Patents Company and licensed rental exchanges the same as Defendants' Exhibit No. 50, which I now show you? A. It is.

Q. Is it now in use? A. It is.

Q. Has the Motion Picture Patents Company granted a license to the Kinemacolor Company of America? A. It has.

4 Q. When was that license granted? A. It was granted on the 4th of August, 1913.

Mr. GROSVENOR: I object to that testimony and to questioning along this line, the date fixed by the witness being subsequent to the time when the Government closed the taking of testimony in this case.

Mr. CALDWELL: That objection relates to this last exhibit only?

Mr. GROSVENOR: And to this line of questioning. To this subject matter of the Kinemacolor Company.

By Mr. KINGSLEY :

1

Q. Is the paper which I now show you, the original license agreement between the Motion Picture Patents Company and the Kinemacolor Company of America, entered into August 4th, 1913? A. It is.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: My objection as stated goes to all questions and documents on this subject.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 51," and is as follows: 2

Defendants' Exhibit No. 51.

L I C E N S E A G R E E M E N T.

1. THIS AGREEMENT, made this 4th day of August, 1913, by and between MOTION PICTURE PATENTS COMPANY a corporation organized and existing under the laws of the State of New Jersey, and having an office at Orange, in said State, party of the first part (hereinafter referred to as the Licensor), and KINEMACOLOR COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of New York, and having an office at New York City, party of the second part (hereinafter referred to as the Licensee), WITNESSETH that: 3

2. WHEREAS, the Licensor represents that it is organized to own, deal in and grant licenses under Letters Patent pertaining to the motion picture art, and that it is the owner of all the right, title and interest in and to the following United States Letters Patent, all relating to improvements in the motion picture art: 4

No. 578,185, dated March 2, 1897, for Vitascope, granted to Thomas Armat;

No. 580,749, dated April 13, 1897, for Vitascope, granted to Thomas Armat;

No. 586,953, dated July 20, 1897, for Phantascope, granted to Charles F. Jenkins and Thomas Armat;

- 1 No. 588,916, dated August 24, 1897, for Kinetoscope, granted to Charles M. Campbell as the assignee of Willard G. Stewart and Ellis F. Frost;
- No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted to American Mutoscope Company as the assignee of Herman Casler;
- No. 673,329, dated April 30, 1901, for Kinetoscope, granted to The American Vitagraph Company as the assignee of Albert E. Smith;
- No. 673,992, dated May 14, 1901, for Vitascope, granted to Thomas Armat;
- 2 No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted to E. & H. T. Anthony & Co. as assignee of Woodville Latham;
- No. 722,382, dated March 10, 1903, for Animated Picture Apparatus, granted to American Mutoscope & Biograph Company as the assignee of John A. Pross;
- No. 744,251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;
- No. 12,192, dated January 12, 1904, for Kinetoscopic Film, granted to Thomas A. Edison, the same being based on Letters Patent numbered 589,168, dated August 31, 1897;
- 3 No. 770,937, dated September 27, 1904, for Kinetoscope, granted the Vitagraph Company of America as the assignee of Albert E. Smith;
- No. 771,280, dated October 4, 1904, for Winding-Reel, granted Albert E. Smith;
- No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted the Vitagraph Company of America as the assignee of William Ellwood;
- 4 No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted the Vitagraph Company of America as the assignee of Albert E. Smith; and
- No. 13,329, dated December 5, 1911, for Kinetoscope granted to the Licensor as assignee, by mesne assignments of Thomas A. Edison, the same being also a reissue of Letters Patent No. 589,168, aforesaid, and for the invention set forth in a previous reissue thereof numbered 12,037, dated September 30, 1912;

5. WHEREAS, the Licensee is engaged in the manufacture, importation, sale, renting and exhibition of motion pictures, in natural color, commonly known as "Kinemacolor Motion Pictures," including the printing of positive kinemacolor motion pictures from the negatives of kinemacolor motion pictures, and relying upon the aforesaid representations of the Licensor and induced thereby, desires to obtain from the Licensor a license under said two reissued Letters Patent Nos. 13,329 and 12,192 and Letters Patent No. 629,063, and to use for exhibition and to lease and to rent for exhibition, positive kinemacolor motion pictures in exhibiting or projecting machines containing the inventions, or any of them, described and claimed in said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and to sell, lease, rent or use for exhibition positive kinemacolor motion pictures on film of a width approximately one and one-eighth ($1\frac{1}{8}$) inch or less in certain territory and on film of any width in certain territory.

6. NOW, THEREFORE, the parties hereto, for and in consideration of the sum of One Dollar to each in hand paid by the other, and for other good and valuable considerations from each and to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

7. The Licensor hereby grants to the Licensee, for the term and subject to the covenants, conditions and stipulations hereinafter expressed, the right and license under said reissued Letters Patent No. 13,329 and Letters Patent No. 629,063 for the United States, its territories, dependencies and possessions (hereinafter called the "territory aforesaid") to manufacture, import and use such a number of cameras embodying the inventions of said reissued Letters Patent No. 13,329 and Letters Patent No. 629,063, as may be necessary for the proper conduct of the Licensee's business in the manufacture of kinemacolor motion pictures, and to manufacture, print and produce and acquire negative and positive kinemacolor motion pictures embodying the inventions of said reissued Letters Patent No. 12,192. The Licensor hereby further licenses the Licensee to use for exhibition, and to lease and to rent for exhibition, positive kinemacolor motion pictures, made or otherwise acquired by it

1 under this license, in the United States, its territories, de-
pendencies and possessions, (with the exception of its insular
possessions and Alaska), hereinafter referred to as the "lease
territory aforesaid," on film of a greater width than approx-
imately one and one-eighth ($1\frac{1}{8}$) inch upon condition that
they shall not be used in exhibiting or projecting machines
containing the inventions or some of them of said Letters
Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329,
673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205,
and 785,237, and not licensed by the Licensor, and to sell,
2 rent, lease and use for exhibition positive kinemacolor mo-
tion pictures embodying the inventions of said reissued Let-
ters Patent No. 12,192, on film of a width approximately one
and one-eighth ($1\frac{1}{8}$) inch or less in the "lease territory
aforesaid" and on film of any width in or for use in said
insular possessions and Alaska and foreign countries, here-
inafter referred to as "said export territory;" shipments
thereto and sales and leases therefor being hereinafter re-
ferred to as "for export."

3 The license hereby granted is personal to the Licensee
and does not include the right to dispose of in the "territory
aforesaid," any cameras embodying the inventions covered
by said reissued Letters Patent No. 13,329, and Letters Pat-
ent No. 629,063; and in the event of the Licensee's permanent
discontinuance of business or retirement therefrom for a
period of six consecutive months, the license hereby granted
shall be immediately terminated.

4 The Licensee covenants and agrees not to manufacture
or otherwise acquire, during the continuance of this agree-
ment, and prior to August 31, 1914, any motion pictures
embodying the inventions of said reissued Letters Patent
No. 12,192, other than the kinemacolor motion pictures which
the Licensee is hereby licensed to manufacture or otherwise
acquire, and that the Licensee, during the continuance of this
agreement, will use on exhibiting or projecting machines
containing the inventions, or some of them, of said Letters
Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,-
992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and
785,237, only such motion pictures, other than kinemacolor
motion pictures as are licensed by the Licensor, and ob-
tained from a person, firm or corporation licensed by the
Licensor to sublet such motion pictures.

The Licensee further covenants and agrees that during

the continuance of this agreement, it will not use or permit the use of any kinemacolor motion pictures, owned or leased by it, on any motion picture projecting machine containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, not licensed by the Licensor. 1

The parties hereto understand and agree that, by the expression "kinemacolor motion pictures," as hereinbefore and hereinafter used, is meant a translucent or transparent tape-like film having photographs thereon of an object in motion taken or projected through successive color screens of different colors, and that by the expression "running foot," as hereinafter used as applied to said kinemacolor motion pictures, is meant the space on such kinemacolor motion picture film occupied by a unit of thirty-two pictures taken in approximately one second, and not an actual linear foot of twelve (12) inches, it being mutually understood that, on such kinemacolor motion pictures as manufactured and used by the Licensee at the date of this agreement, such thirty-two pictures taken in one second occupy a tape of film twenty-four inches (24") in length, and, that, as such kinemacolor motion pictures are made and used by the Licensee at the date of this agreement, such twenty-four inches (24") will constitute one "running foot of motion pictures" under this agreement. 2 3

The parties hereto further agree that, as used in this agreement, by the expression "lease" is meant the method to be used by the Licensee in disposing of kinemacolor motion pictures to others for the purpose of subleasing such kinemacolor motion pictures to exhibitors thereof, or for use for exhibition by such lessee for an indefinite period, and that by the expression "rent" is meant the method now used by the Licensee in disposing of kinemacolor motion pictures for exhibition by exhibitors thereof for short periods specified in the rental agreement between said exhibitor and the Licensee. 4

8. The Licensor, for itself, its successors, assigns and legal representatives, hereby releases, acquits and discharges the Licensee from any and all claims, demands and liability for profits and damages, because of any infringement by the Licensee of any or all of the aforesaid United States Letters

1 Patent Nos. 578,185, 580,749, 586,953, 588,916, 629,063, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and reissued Letters Patent Nos. 13,329 and 12,192, or use by the Licensee of the inventions, or any of them, covered by said Letters Patent or either of them prior to the date hereof.

2 9. The Licensee hereby recognizes and admits the validity of said reissued Letters Patent No. 13,329, and the validity of said reissued Letters Patent No. 12,192 and Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 629,063, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, and agrees not to contest or question the same during the continuance of this agreement.

3 10. The Licensee further covenants and agrees that the Licensee will, within fifteen (15) days after the twentieth (20th) day of each month after this agreement takes effect, and during its continuance, submit a statement in writing, signed by the proper officer of the Licensee, and sworn to if requested by the Licensor, showing the total number of running feet of new subjects of kinemacolor motion pictures listed and offered for lease or used for profit by it, in the "lease territory aforesaid" during the period from the twentieth (20th) day of the preceding calendar month to the twentieth (20th) day of the month for which such statement is submitted, and will at the same time pay to the Licensor a royalty of one cent (1c) per running foot on such total number of running feet of new subjects. The Licensee further covenants and agrees to keep correct books of account and to permit the Licensor to determine, by examination thereof, at all reasonable times and through any reputable
4 chartered accountants to be selected by the Licensor, the number of running feet of new subjects of kinemacolor motion pictures so listed and leased or used for profit by the Licensee while this agreement is in effect, if the Licensor should so desire.

By the expression "running feet of new subjects" as used in this agreement, the parties hereto agree, is meant the aggregate amount ascertained by adding together the individual number of running feet of one print of each and every new kinemacolor motion picture on film of a greater width

than approximately one and one-eighth (1-1/8) inch, regularly listed and offered for lease in the "lease territory aforesaid" or used for profit in said "lease territory aforesaid."

It is mutually covenanted and agreed between the Licensor and the Licensee, that the first report made under the provisions of this paragraph shall be made within fifteen (15) days after the 20th day of August, 1913, for the period between the day when this agreement goes into effect and the said 20th of August.

12. The Licensor and Licensee further mutually covenant and agree that the Licensor may charge royalties or rents for the use of all exhibiting or projecting machines capable of exhibiting or projecting motion pictures on film of a width greater than approximately one and one-eighth (1-1/8) inch, containing the inventions, or any of them, described and claimed in the aforesaid Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, licensed by the Licensor and that all such royalties or rents shall be collected by the Licensor, directly or indirectly, from the exhibitors, including the Licensee, using such machines, and shall be fixed by the Licensor and charged to and so collected from such exhibitors by the Licensor at such a rate as to average as nearly as possible a royalty or rental of ninety cents (90c) per week for each such licensed machine in use, and that the Licensor shall, upon the request of any of its licensees or of any user of such projecting machine, license the use of any projecting machine containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237, manufactured and sold under the license of the Licensor, upon the conditions (1) that said machines shall be used solely for exhibiting or projecting motion pictures containing the inventions of said reissue Letters Patent No. 12,192, licensed by the Licensor, while it owns or controls the Letters Patent under which such machine is licensed; and (2) upon other terms to be fixed by the Licensor while in use and while the Letters Patent under which it is licensed are owned or controlled by the Licensor (which other terms shall only be the payment of a royalty or rental to the Licensor while in use

1 and which royalty or rental during the continuance of this
agreement shall not be more than Ninety Cents (90c) per
week; and that the Licensor shall not during the continu-
2 ance of this agreement cancel the license for the use of any
such projecting machine because of a violation of Condition
(1) hereof until a court of competent jurisdiction shall have
restrained the unlawful use of such projecting machine.

The Licensee further covenants and agrees that it will
collect, directly or indirectly, from the user of each pro-
jecting machine licensed for use by the Licensor under said
Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,-
3 329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,-
205 and 785,237, to whom the Licensee supplies kinemacolor
motion pictures, and pay to the Licensor, the aforesaid roy-
alty of Ninety Cents (90c) per week while the user of such
projecting machine uses such machine with kinemacolor mo-
tion pictures supplied by the Licensee, unless said royalty
is so collected and paid by another, and that it will, on Tues-
day of each week, forward to the Licensor a report, in a form
approved by the Licensor, showing the name of each user
to whom it is supplying kinemacolor motion pictures during
3 that week, together with the name and address of each place
of exhibition where each such machine is being used, and
that it will, at the same time, forward to the Licensor such
royalty so collected by it for that week. The Licensee fur-
ther covenants and agrees that it will, at the same time, like-
wise report to the Licensor the name and address of each
place of exhibition where the Licensee will use, during that
week, in giving exhibitions of motion pictures for profit, a
projecting machine embodying the inventions, or some of
them, of said Letters Patent Nos. 578,185, 580,749, 586,953,
588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937,
4 771,280, 785,205 and 785,237, and at the same time pay a roy-
alty of Ninety Cents (90c) per week for the use of each such
projecting machine so used by the Licensee with kinemacolor
motion pictures only.

The Licensee further covenants and agree that it will, on
leasing any kinemacolor motion picture to any person, firm or
corporation in the "lease territory aforesaid" for use by such
lessee on projecting machines embodying the inventions, or
some of them, of said Letters Patent Nos. 578,185, 580,749,
586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251,
770,937, 771,280, 785,205 and 785,237, report each such lease

to the Licensor, within five (5) days after making such lease, together with the title of the subject and the number of positive prints of such motion picture so leased, and the name and address of the lessee. 1

14. The Licensee further covenants and agrees to mark each and every camera which the Licensee may make or use under this agreement embodying the inventions of reissued Letters Patent No. 13,329, and Letters Patent No. 629,063, or any of them, with the word "Patented" followed by the dates of grant of all of the said Letters Patent the inventions claimed in which are embodied in the said camera or apparatus, and to photographically print the Licensee's trade mark on the title of each positive motion picture on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch leased, rented or exhibited by the Licensee in the "lease territory aforesaid," and to mark conspicuously on the labels which shall be placed on boxes or packages containing positive kinemacolor motion pictures on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch leased or rented by the Licensee in the "lease territory aforesaid," the following words and figures: 2 3

LICENSED MOTION PICTURE.

Leased by and Property of

KINEMACOLOR COMPANY OF AMERICA

(Patented in the United States August 31, 1897; reissued January 12, 1904.)

The enclosed motion picture is leased only and upon the following terms and conditions:— 4

1. That the lessee shall not sell or otherwise dispose of the same outright, but shall have only the right to sub-let or use such motion picture.

2. That the lessee shall not permit such motion picture to be exhibited on projecting machines containing the inventions, or some of them, of Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,-

- 1 251, 770,937, 771,280, 785,205, and 785,237, and not licensed by the Motion Picture Patents Company of New Jersey.

3. That the lessee shall not have the right to sublet such motion picture for use on projecting machines containing the inventions, or some of them, of Letters Patent Nos. 578,-185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,-382, 744,251, 770,937, 771,280, 785,205, and 785,237, until such lessee has entered into an agreement in writing with the Motion Picture Patents Company containing terms and conditions to be prescribed therein by it, and only while such
2 lessee complies with all such terms and conditions and while such agreement remains in full force and effect.

4. That the lessee or user thereof shall not make or permit others to make any reproduction commonly known as a "dupe," of such motion picture.

5. That the lessee or user thereof shall not remove the trade mark or trade name or title therefrom.

- 3 6. That the violation of any of the foregoing conditions, including the terms and conditions of the agreement referred to in 3, entitles the lessor to immediate possession of this motion picture without liability for any price which the lessee or the person in whose possession it is found, may have paid therefor.

15. The Licensee further covenants and agrees not to use, without the consent in writing of the Licensor, in the production of negative or positive kinemacolor motion pictures, under this agreement, reproductions commonly known as
4 "dupes" of the negative or positive motion pictures of any other manufacturer or person, firm or corporation.

16. The Licensor has established the following scale of minimum prices (which the Licensee admits is a fair and reasonable one) for the lease of positive kinemacolor motion pictures on film of a greater width than approximately one and one-eighth ($1\frac{1}{8}$) inch in the "lease territory aforesaid," embodying the invention of said reissued Letters Patent No. 12,192, when leased for the purpose of sub-leasing for use on

projecting machines containing the inventions, or some of them, of said Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,237: 1

List	11 cents per running foot.				
Topical Pictures	9	"	"	"	"
Films leased between two and four months after re- lease date	9	"	"	"	"
Films leased between four and six months after re- lease date	7	"	"	"	"
Films leased after six months after release date..					any price.

A rebate of 10 per cent may be allowed on all of the above prices; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November and January, on all motion pictures leased during the two months preceding each said period, provided all the terms and conditions of the agreement, referred to in Clause (3) of paragraph 24 have been faithfully observed. 2 3

The Licensor and Licensee further mutually covenant and agree that the Licensor shall fix and determine the minimum lease prices at which such motion pictures shall be leased by the Licensee in the "lease territory aforesaid," under this license and shall change such scale of minimum prices from time to time as in its judgment market conditions may require; and the Licensee further agrees that any changes which may hereafter be made in said scale of prices, and of which the Licensee shall be notified in writing by the Licensor, shall be accepted and adopted by the Licensee in the place and stead of the scale of prices above given or of any substitute or substitutes therefor adopted prior to such change; each such notice to be given to the Licensee at least three weeks in advance of the change to be made. 4

18. The Licensor and Licensee further mutually covenant and agree that such positive kinemacolor motion pictures

1 made or otherwise acquired by the Licensee, and not leased
or sold prior to the date of this agreement shall be subject to
the scale of prices aforesaid, and shall be leased in the "lease
territory aforesaid," under this license at not less than the
prices fixed in said scale of positive motion pictures as pro-
vided for in Paragraph 16.

20. The Licensee further covenants and agrees not to
lease such kinemacolor motion pictures for the purpose of
such sub-leasing in the "lease territory aforesaid," under any
circumstances, either directly or indirectly, during the con-
2 tinuance of this agreement, at lower prices than those fixed
and established as provided for in Paragraph 16.

21. It is further mutually covenanted and agreed by the
Licensor and Licensee that the Licensee shall have the right
to sell or otherwise dispose of kinemacolor motion pictures in
or for "said export territory," and that the prices above re-
ferred to in Paragraph 16, or any substitute or substitutes
for the same hereafter adopted by the Licensor, shall not
apply to sales or shipments of kinemacolor motion pictures
3 made *bona fide* for export, when the goods, addressed to the
purchaser, agent or consignee, are delivered to the vessel or
to a transportation company for transportation to "said ex-
port territory," and not otherwise.

23. The Licensor and the Licensee further mutually
covenant and agree that in the "lease territory aforesaid,"
all leases of positive kinemacolor motion pictures by the
Licensee for the purpose of such subleasing shall be at
the prices hereinbefore provided for, without the allow-
ance of any discounts or rebates or other reduction by which
4 a lessee might acquire positive kinemacolor motion pictures
at lower prices than those set forth in Paragraph 16, or
any substitutes therefor hereafter adopted by the Licensor.

The Licensee further covenants and agrees that, in the
"lease territory aforesaid," the Licensee will not sell or
offer for sale other goods or merchandise at less than cur-
rent prices in order to induce the lease of positive kine-
macolor motion pictures, for the purpose of such subleas-
ing nor present or donate other goods or merchandise or
prizes, or make use of credit cards or trading stamps, or

offer any premiums of any kind whatsoever to induce such
lease of such positive kinemacolor motion pictures. 1

24. It is further mutually covenanted and agreed by and
between the Licensors and Licensee that no lease under this
license or rental of positive kinemacolor motion pictures, on
film of a greater width than approximately one and one-
eighth ($1\frac{1}{8}$) inch, shall be made in the "lease territory
aforesaid" by the Licensee, except upon and subject to the
following terms and conditions, the substance of which
(with the exception of the conditions as to the return of
positive motion pictures hereinafter referred to), shall be 2
expressed in a printed notice on the labels, as provided for
in Paragraph 14, accompanying each such positive motion
picture, namely, (1) that the lessee of such positive motion
picture shall not sell or otherwise dispose of the same out-
right, and shall not have the right to use or sub-lease for
use such positive motion picture in giving motion picture
exhibitions in machines containing the inventions, or some of
them, of said Letters Patent Nos. 578,185, 580,749, 586,953,
588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937,
771,280, 785,205, and 785,237, not licensed by the Licensors, 3
and (2) that the lessee shall not make or permit others to
make any reproduction commonly known as a "dupe" of
such positive motion picture and (3) that the lessee shall
not sub-lease the same for use on projecting machines con-
taining the inventions, or some of them, of Letters Patent
Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992,
707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and 785,
237, until such lessee has entered into an agreement in writ-
ing with the Licensors containing terms and conditions to
be prescribed therein by it, and only while such lessee com-
plies with all such terms and conditions and while such 4
agreement remains in full force and effect; and (4) that
the lessee of such positive motion picture shall not remove
the trade-mark or trade name or title therefrom; and (5)
that if the lessee sub-leases motion pictures as provided in
(3) hereof, he shall return to the Licensee (without any
payment therefor except the transportation charges incident
to the return of the same) on the first day of every month,
beginning with February, 1914, an amount in running feet
of positive motion pictures (on film of a greater width than
approximately one and one-eighth ($1\frac{1}{8}$) inch) of the make

1 of the Licensee equal to ninety (90) percent of the amount
that was so leased during the seventh month preceding the
date of each such return, with the exception, however, that
where any such positive motion pictures are destroyed by
fire or lost in transportation, and proof satisfactory to the
Licensee is furnished as to such destruction or loss, the
amount so destroyed or lost shall be deducted from the
amount to be returned as aforesaid; and (6) that the viola-
2 tion of any of the foregoing conditions, including the terms
and conditions of the agreement referred to in condition
(3) above, entitles the lessor to immediate possession of
such motion picture without liability for any price which
the lessee, or the person in whose possession it is found,
may have paid therefor.

25. The Licensors and the Licensee further mutually
covenant and agree that the Licensee shall not have the
right under this license to supply kinemacolor motion pic-
tures to anyone who uses said kinemacolor motion pictures
or sub-lets them for use in the "lease territory aforesaid"
on projecting machines containing the inventions, or some
3 of them, of said Letters Patent Nos. 578,185, 580,749, 586,
953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251,
770,937, 771,280, 785,205, and 785,237, and not licensed by
the Licensors.

It is further mutually understood and agreed that the
Licensee shall have the right to use, without payment of
royalty therefor, motion picture projecting machines contain-
ing the inventions, or some of them, of said Letters Patent
Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,
934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237
in testing, and in exhibiting to possible or prospective les-
4 sees or purchasers, positive kinemacolor motion pictures in
connection with the Licensee's manufacture thereof, but not
for the purpose of giving exhibitions thereof for profit.

32. It is further mutually covenanted and agreed by and
between the Licensors and Licensee that unless sooner termi-
nated, as hereinbefore or hereinafter provided, this agree-
ment and the license granted thereby shall take effect August
11th, 1913, and shall continue until August 31, 1914, but that
the Licensee may renew this agreement and license there-
after for another term ending June 20, 1915, upon the same

terms, conditions and stipulations as herein provided, by giving notice to the Licensor on or before July 20, 1914, of the Licensee's election to so renew this agreement and license, and upon the giving of such notice this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for another term, ending June 20, 1915, and that the Licensee may again renew this agreement and license, from year to year, upon the same terms, conditions and stipulations as herein provided, but only during the period from June 20th, 1915, to August 26th, 1919, the date of expiration of the Letters Patent No. 707,934, by giving notice to the Licensor on or before May 20 of each year, of the Licensee's election to so renew this agreement and license, and on the giving of such notice, this agreement and the license thereby granted shall be considered and treated by the Licensor and Licensee as renewed for the year for which such notice was given.

It is further mutually covenanted and agreed by and between the Licensor and the Licensee, that if at any time during the continuance of this agreement, or of any renewal thereof, not more than five (5) of the manufacturers or importers (not including the Licensee) licensed by the Licensor at the date of this agreement to manufacture or import motion pictures under the Letters Patent owned by it, remain licensees of the Licensor, either of the parties hereto may on thirty (30) days' notice in writing to the other, terminate this agreement.

33. It is further mutually covenanted and agreed by and between the Licensor and Licensee that if, during said original term or during any such renewal period, either party should knowingly or through gross neglect or carelessness, be guilty of a breach, violation or non-performance of its covenants, conditions and stipulations, resulting in substantial injury to the other party, and should, for the period of forty (40) days after notice thereof from the other party, persist therein or fail to correct, repair or remedy the same, then and in such case the party aggrieved may terminate this agreement by giving notice in writing to the guilty party of its intention so to do. It is, however, mutually covenanted and agreed by and between the Licensor and Licensee that if the guilty party should correct, repair or remedy such breach, violation or non-performance of its covenants, con-

- 1 ditions and stipulations within the said period of forty (40)
days after such notice, and should, thereafter knowingly or
through gross neglect or carelessness be guilty of a second
breach, violation or non-performance of its covenants, con-
ditions and stipulations, resulting in substantial injury to
the other party, then and in such case, the party aggrieved
may terminate this agreeemnt by giving thirty (30) days'
notice in writing to the guilty party of its intention so to do.
Such termination of the agreement, however, shall not preju-
dice either party hereto in the recovery of damages because
2 of any such breach, volation or non-performance by the other
party hereto.

36. All notices provided for in this agreement shall be
in writing and shall be given by delivering the same to the
Licensor or Licensee, as the case may be, or to an officer of
the Licensor or Licensee, as the case may be, or by depositing
such notice, postage prepaid, in any Post Office of the United
States, in a sealed envelope directed to the Licensor or the
Licensee, as the case may be, at its last known Post Office
address, to be forwarded by registered mail.

- 3 37. It is mutually covenanted and agreed by and be-
tween the Licensor and Licensee that after notice of
the termination of this agreement and the license granted
thereby by either party, as provided for in Paragraph 33,
and after the same have been terminated, no matter what
the cause or manner of termination may be, neither this
license agreement, nor the fact that the Licensee has en-
tered into or acted under it, shall be used in any manner,
directly or indirectly, by or for the Licensor, its successors,
assigns or legal representatives, or by or for others with
its or their consent or permission, against the Licensee, or
4 the Licensee's successors or legal representatives, in any
litigation, controversy or proceeding involving the Licensee
or them or any other persons, firms or corporations,
or in any other way; it being understood and agreed that
upon such termination the positions and rights of the
Licensor and Licensee shall be the same as if this agree-
ment had not been made; provided, however, that the rights
of neither party shall be prejudiced by such termination in
the recovery of damages for any breach or other violation

of this agreement by the other occurring prior to such termination. 1

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written; it being noted that it contains no paragraphs numbered 3, 4, 11, 13, 17, 19, 22, 26, 27, 28, 29, 30, 31, 34 and 35.

MOTION PICTURE PATENTS COMPANY,

By

H. N. Marvin,
President. 2

[SEAL.]

Attest:

George F. Scull,
Secretary.

KINEMACOLOR COMPANY OF AMERICA,

By

A. P. Barnard,
President.

[SEAL.]

Attest:

William E. Ely,
Secretary.

3

By Mr. KINGSLEY:

Q. Mr. Marvin, what were some of the reasons for the formation of the General Film Company as advanced by you? A. In the exercise of the motion picture dramatic art, it was necessary that distributing agencies should exist for the distribution of the records of the motion picture dramas to exhibitors. These distributing agencies were commonly known as rental exchanges. The rental exchanges which distributed the motion picture drama records of the licensed producers to the licensed exhibitors during the year 1909 and the early part of the year 1910, had not, as a class, proved to be satisfactory in the conduct of that business, either to the licensed producers, to the Motion Picture Patents Company, to the licensed exhibitors, or to the public. The efficiency of distribution under the conditions then prevailing, was low. The service afforded by these distributors to exhibitors was incomplete, unreliable, inefficient and unsatisfactory. It became more and more apparent as time went on that the system of distribution 4

- 1 then in vogue was a menace to the entire motion picture art. The expansion of the art was retarded. Its development was hindered. Numerous complaints came to the Motion Picture Patents Company from its licensees, both producers and exhibitors of motion pictures, concerning the manner in which the distributing agencies conducted their business. Both manufacturers or producers, and exhibitors, were practically at the mercy of the rental exchanges. Upon the intelligence and sagacity and the honesty of these exchanges depended to a very large degree, the prosperity of both producers and exhibitors. The producers were spending very large sums in the production of motion picture dramas in an effort to please the public and stimulate the demand for the production of these dramas. The exhibitors were spending large sums in the equipment of theatres for the purpose of attracting more and better classes of people to the exhibitions. Such investments of producers and exhibitors were constantly menaced and jeopardized by the inefficient and unsatisfactory manner in which the records of these dramas were handled by the exchanges. It was impracticable for the exhibitor of a motion picture drama to obtain the record of the drama directly from the producer of the drama. Although the exhibitor might have a large investment in his theatre, and the producer a large investment in his producing plant, and the producer might produce dramas eminently suitable and satisfactory for use by the exhibitor, and the exhibitor might build and equip a theatre eminently adapted to the entertainment of the public who desired to see the production of the producer, nevertheless, under the existing conditions, it was frequently practically impossible for the exhibitor to obtain the product of the producer and exhibit it to his audience. And this, in spite of the fact that the producer frequently and usually expended large sums of money in the general advertising of his productions throughout the country, in an endeavor to interest the public in these productions. The faults of the existing rental exchanges were numerous and of divers natures. These rental exchanges commonly had little or no investment in the enterprise. Practically their sole investment consisted in their right to distribute copies bearing records of the motion picture dramas leased from the producers. In many instances, they looked upon their business as a temporary
- 2
- 3
- 4

one. It was their desire frequently to make as large profits in the distribution of these records as possible, without regard to the welfare and permanence of the art generally, and without heed for the future. In this respect they were differently situated from the producers and the exhibitors who, of necessity, incurred heavy fixed expenses and made frequently large investments that could only be recovered through a long continuance of the art. It was common practice of the rental exchanges to make contracts for motion picture service to exhibitors, which they did not live up to. This practice was so general that an exhibitor, even though he might be so situated that he could draw his supply from more than one exchange, found little comfort in changing his source of supply. In many instances—

Mr. GROSVENOR: I object to all this answer and all this dissertation, on the ground that it is immaterial. For the further reason, that the belief of this witness or of his confederates that these rental exchanges were or were not men trying to promote the trade and the art, is no justification to them for putting them out of business, as charged in the petition.

Mr. KINGSLEY: Then, your position is that if the men engaged in the business were not doing anything to better the art, the people interested in the business had no right to go into it themselves?

Mr. GROSVENOR: I say his belief or his opinion, as to whether they were promoting the art, is no justification or defense for violating the laws of these United States. For that reason, I object to all of this dissertation.

Mr. KINGSLEY: This witness is merely telling why he thought it desirable to go into the business, which he has a perfect right to do, as he had a perfect right to go into the business if he saw fit.

A. In many instances, exchanges had little or no financial resources, and so conducted their business that it was unprofitable, and they were unable to pay the producers for the films supplied to them, and they were unable to maintain a sufficient supply and variety of motion pictures to furnish adequate service to exhibitors in their

- 1 territory. In many instances, exchanges owned or became interested in theatres where motion pictures were displayed in competition with other exhibitors, and such exchanges frequently utilized their position as exchanges, and the supply of film leased by them from the licensed producers to unfairly compete with other exhibitors. In some instances, they refused to supply the better class of productions to theatres other than those in which they were interested until such subjects had become stale through exhibition in their own theatres. Exchanges frequently indulged in ruinous competition with each other detrimental to the exhibitors and to the public, by supplying to theatres, served by them, a service which paralleled, that is to say, was practically identical with the service that was being supplied to an adjacent theatre by a competing exchange.
- 2

Whereupon, at 12:30 P. M., an adjournment is taken until 2:30 P. M., at the same place.

3

NEW YORK CITY, October 16th, 1913.

The hearings were resumed pursuant to adjournment at 2:30 P. M., October 16th, 1913, at the same place.

The appearances were the same as at the morning session.

Thereupon, H. N. MARVIN resumed the stand.

Direct examination continued by Mr. KINGSLEY:

- 4 Q. Just go ahead with your answer, Mr. Marvin. A. Thus, the public would find the same exhibitions being given in adjacent theatres, and would not be afforded the variety of exhibitions that was desirable. The exchanges, for the purpose of taking away customers of the other exchanges, would sometimes threaten the exhibitor that unless he took service from them they would give his competitor such extraordinary service at a low price, that he would lose his business, or else, they would threaten to purchase, or establish a theatre adjacent to an exhibitor, and institute competition that would be ruinous to his busi-

ness. They would entice the customers of other exchanges by offers of very attractive service, and after the exhibitor started service with him, they would supply very inferior service. They would sometimes lease so small a quantity of films that they were unable to supply the service required by an exhibitor at any price. They would supply film to exhibitors when it was in such a bad physical condition, so badly worn and mutilated, that it was impossible for the exhibitor to give a creditable presentation of the drama. In their efforts to obtain business, they would sometimes violate the release day rule by exhibiting, or permitting motion pictures to be exhibited, at a date earlier than that fixed by the producer for the general release of the picture throughout the country. Many complaints, both written and oral, came to the Patents Company from exhibitors, from producers, and from the exchanges themselves, emphasizing the prevalence of the above mentioned abuses. In view of these complaints, and our knowledge of the detrimental conditions existing, we were forced to the conclusion that some steps must be taken in the interest of the public, the exhibitors, and the producers of motion picture dramas, to insure a more efficient method of distribution. It was hoped that if the advantage of better methods could be made apparent to the existing exchanges, in many instances, they might be induced to improve their service. Therefore, the licensed producers were finally prevailed upon to establish a rental exchange for the distribution of the dramas produced by them, under conditions that should be more favorable to all parties concerned. In organizing this rental exchange, the producers hoped that by correcting the more serious conditions in certain parts of the country, that a general improvement in business might result, and they also felt the necessity of being prepared to extend the operations of their rental company widely through the country if the exchange should work out in a satisfactory manner, and the necessity for its extension should be manifested.

Q. I notice in your answer you refer to the "release day rule." What was the release day rule? A. The release day rule was really a custom which had grown up in the course of business, and which was in effect at the time the Motion Picture Patents Company was organized. It was the rule or custom of the producer of the motion picture drama to fix a

1 certain day on which the exhibition of that drama would be permitted in all parts of the country, and the motion pictures were released simultaneously all over the country. The Motion Picture Company, in its bulletin to exchanges on this subject, called attention to this rule or custom, and definitely fixed the hour of the day of release—when the day should be considered to start.

Q. Was it the purpose of the Patents Company to enforce this release day rule strictly with respect to the hour upon which the release day started? A. Yes. It was found that
2 unless the rule was strictly observed as to the hour it would lose much of its value.

Q. In speaking of the financial irresponsibility of some of the rental exchanges, did you have reference to the transitory character of their business, or their fluctuating patronage? A. Yes. That was one of the factors that contributed to affect their financial responsibility, since ordinarily they had little or no assets other than their interest in the motion picture subjects in their possession, and of course any diminution in the number of their customers, or the prices paid by their customers, would immediately and seriously affect
3 their financial condition.

Q. When were negotiations instituted between the Kinemacolor Company and the Motion Picture Patents Company, relative to the issuance of that license? A. The Motion Picture Patents Company had instituted suit against the Kinemacolor Company under one of its patents, and when it became time for that suit to be brought up on the calendar, which, I think was during the first month or two of the year 1913, the Kinemacolor Company applied for a license to the Patents Company, and negotiations were then started looking to the licensing of the Kinemacolor Company. For one
4 reason or another, owing to the absence of some of the interested parties, and the illness of others, these negotiations dragged along over a considerable period of time before the license was finally granted, but at the first interview between the representatives of the Patents Company and the representatives of the Kinemacolor Company, at the time I have mentioned, both parties expressed a willingness to enter into such a license agreement, and there practically remained little to do after that, other than to arrange the terms on which such a license should be granted and accepted.

Q. Did you continue as Vice-President of the Motion Pic-

ture Patents Company in 1910? A. I was Vice-President up to and including 1910, according to my recollection. I later became President. 1

Q. During that period were you in charge of the business of the Motion Picture Patents Company with respect to its correspondence and with respect to dealing with complaints from rental agencies, and exhibitors, and others, who might have licenses from the Patents Company? A. Yes; during that time I handled most of the correspondence with the exhibitors and exchanges.

Q. During that time did you receive letters complaining of unfair competition of exchanges and of discrimination on the part of exchanges because they owned theatres, or for other reasons? A. I did; many of such letters. 2

Q. I show you a letter dated March 17th, 1910, Newberg, Oregon, addressed to Motion Picture Patents Company, and signed C. C. Allen, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: It is objected to as immaterial and irrelevant. 3

Defendants' Exhibit No. 52.

Newberg, Oregon March 17, 1910.

Motion Picture Pattens Co.

Mr. J. J. Kennedy.

Dear Sir:

I wish you would tell me if you can why I am being treated the way I am now. I have been getting my goods from the licensed exchange every since it became one and here a short time ago I made a trip a few miles above Newberg and also below here to another little town and found that H. C. Stevens was furnishing them films at \$17 per week the exact goods I was paying \$28. per week and some of the pictures they sent me after I had seen them there in those two places so I went to Portland and had a talk with H. C. Stevens and asked him why he was serving me in this way and he talked very insulting to me so I quit him and went to the Independent Co. for a short time then I went 4

1 back to him and fixed it up and began taking goods from
that exchange again and am to this time getting all of
my goods from them and now he H. C. Stevens has leased
the building over my head unknown to me and told me he
would run me out and had the people who own the build-
ing to notify me to get out by April first which I suppose
I will have to do I went to him and told him I would make
no more changes if he only give me the privilege of staying
but he would not so now he is having me thrown out and
is going to put in a show himself he offers me about half
2 what my goods is worth to get me out and tells me if I don't
get me out he will run me out and I know if this big ex-
change is back of him I need not stay for of course they
have too much money for me.

Now Patent Company I appeal to you what have I been
paying this \$2 per week for if it affords me no protection
in any way please stop and consider what this license means
from every show house in the country I shall certainly tell
others how I have been used and see what can be done unless
you can do something to stop his proceedings.

Kindly let me hear from you at once and let me know
3 what can be done in regard to what I have wrote you.

Respectfully yours,

C. C. ALLEN

By Mr. KINGSLEY:

Q. I show you a letter on the letterhead of the Elite The-
atre, of Woodland, California, dated March 8th, 1910, and
ask you if you received that letter? A. I did.

4 Q. I show you another letter on the same letterhead,
dated Woodland, California, April 6th, 1910, and ask you if
you received that letter? A. I did.

Mr. KINGSLEY: I offer those two letters in evidence.

Mr. GROSVENOR: Objected to because immaterial,
irrelevant, and having no bearing upon any of the
issues in this cause.

Defendants' Exhibit No. 53.

1

Letterhead of

ELITE THEATRE.

Woodland, Cal., Mar. 8, 1910.

Motion Picture Patents Co.,
New York, N. Y.

Gentlemen:

Enclosed please find blank filled out as per your request. I would also like to call your attention to the fact that a new competitor using licensed film has opened here in the past few days. The mere fact that a new competitor has sprung up is of no material matter to us, as we may constantly expect competition.

However, in this particular case I believe we are entitled to the protection promised by your company.

The facts are these.

A few weeks ago, while in San Francisco, I called on Messrs. Turner and Dahnken, who have been trying to obtain my patronage ever since they have been a licensed exchange.

This house as you may see by our letter heads and also by your record has been in existence approximately two years and has always used licensed film. Miles Bros. of S. F. have supplied us ever since we have been in business, and we are thoroughly satisfied with the service they are furnishing. We use 21 reels a week. The population of this town is about 4500. Two picture theaters can make a little money, three are more than the town will stand. In that case it is a survival of the fittest. But I don't believe that we should be subjected to the competition of a film exchange who are merely trying to force us to take their service.

When in Turner and Dahnken's office, I was informed that if I did not take their service a new house would shortly be established in Wood. that would either put me out, or compel me to come to them. I decided that Miles Bros. were good enough for me, and stuck. The new house is here, and I would like to know what protection we are getting.

While no direct threat was used the insinuation was

1 made by Mr. Dahnken himself, in presence of Mr. Turner and Mr. Johnson. The new house is started and managed by a distant relative of Mr. Dahnken.

These are the facts of the case, and trusting you will give the matter your attention, I beg to remain,

Yours truly,

WILLIAM HUNT.

2 **Defendants' Exhibit No. 54.**

Letterhead of

ELITE THEATRE.

Woodland, Apr. 6, 1910.

Motion Picture Patents Co.,
New York.

Gentlemen,

3 Replying to your favor of Mar. 19th., in regard to my making affidavit in regard Turner and Dahnken's making statement that if I did not take their service they would establish a new house in Woodland, will state that acting on attorney's advice, am willing to make such affidavit provided you can protect me from a damage suit in case they should lose their license on the strength of my affidavit. As I stated to you in first letter there were no witnesses except Mr. Turner and Mr. Dahnken and Mr. Johnson of their firm. The remark made by Mr. Dahnken as nearly as I can remember was that if I did not take their service in the course of the next couple of months there would be
4 a new house in Woodland that would be using their service. It was not a direct statement that they would establish the house but two and two make four.

The new house is here, established by a Mr. McCue a relative of Dahnken and a Mr. Melvin an illustrated song singer who is McCue's brother in law and 4 weeks previously to opening this house was singing illustrated songs in a picture show in Napa, Cal. at a salary of \$15 per week. McCue a few weeks previously to coming to Woodland was a bartender in Vallejo, Cal. It hardly looks reasonable that these men in a few short weeks could have acquired enough money

to fit up a moving picture that cost them \$200 for the stage, and \$290 for electric wiring to say nothing of the picture machine, seats, piano etc. I would further state that prior to their opening here, the two established houses were using 20 reels of licensed film per week. We divided the headliners and both houses were running smoothly without either showing conflicting programs. On the third house coming in conflicting programs are the rule, not the exception, one of the old houses has gone independent and the entire business is in a badly demoralized condition. The entire business of the houses is not as large as the business of the two old houses was for the same period of the last year, although every thing points to a more prosperous season in this territory than last year. Our patrons are continually complaining of seeing the same pictures at both houses, and the business is gradually falling off. What makes it still worse is that we have the competition of an independent house, so that really I who have always used licensed films am getting the brunt of a battle with an independent and a licensed competitor, where I really should be getting assistance to fight the independent house.

I would also like to state that I have so far seen no reason why I should have switched service as Miles Bros. have always treated me fairly and in this fight are giving me a far better service than the other house is getting. I have also found Miles Bros., to be a firm that make no promises that they cannot or do not fulfill, whereas Turner and Dahnken are notorious on this Coast for being great promisers but poor keepers once you are using their service.

Woodland is not the only place that Turner and Dahnken have tried these tactics in as doubtless are aware.

In reply to yours of Mar. 30 would state L. D. Capps has no theater. He is a small farmer here who owns a picture machine and during the summer months makes tours of the smaller towns giving exhibitions. The Billiou Theater is situated one half block from my house, The Elite, at 528 Main St. It is around the corner from us, as we are on First St. The firm name is McCue and Melvin.

The population of Woodland is 4500.

Yours truly,

WILLIAM HUNT.

1 By Mr. KINGSLEY:

Q. I show you a letter dated Berkeley, Cal., November 30, 1910, signed F. H. Mitchell, Manager, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the same objections to that letter.

Defendants' Exhibit No. 55.

2

Berkeley, Cal., Nov. 30, 1910.

Motion Picture Patents Co.,
New York City,
N. Y.

Gentlemen:—

Your postal of the 21st inst. in reference to why I discontinued the Association Film Service, would say that the theatre in Berkeley known as the Varsity was showing practically all the films ahead of me, and using a service
3 that the business in Berkeley would not seem to warrant.

I have every reason to believe that the Varsity Theatre is owned by the Turner & Danken Film Exchange of San Francisco. I had previously been using the Association Films for the past two years and a half, and changed to the Independent Service the fore part of this month.

Now, wherein, I do not make it a positive statement that the Turner & Danken people own the Varsity Theatre, many things have transpired that lead me to believe that they do. I at one time took service from them but owing
4 to the way they took care of their films, also the lack of so many titles, and other unsatisfactory conditions, I changed to another house.

I would be glad to take up the Association Films again if I found that I could do business enough to handle them against this strong opposition that I have been contending with.

Very respectfully,

F. H. MITCHELL.

By Mr. KINGSLEY:

1

Q. I show you a letter dated San Rafael, Marin Co., Cal., June 2, 1910, signed C. A. Riffe, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: It is objected to on the same grounds.

Defendants' Exhibit No. 56.

San Rafael, Marin Co., Cal.,
June 2nd, 1910.

2

Motion Picture Patents Co.

Gentlemen:

My exchange, Miles Bros. has shown me a letter you wrote me in regard to my changing the name of my pictures in my Ukiah house and in reply would say that no doubt this report has been handed in to you by the Pastime Theatre of Ukiah I copied this Idea from him. he opened up in Ukiah a few months ago and made threats that I would not be able to keep track of his films, and in a short time would be showing the same he had shown. he prints a program for the Lobby of his theatre I am told and then shows older and different pictures in side. He never puts his program in the paper or on hand bills, therefore I can send you no proof of what I say. Ukiah is not big enough for two shows of this kind. I informed you of this fact before you issued him a license, before he opened up I was making from \$20 to \$30.00 per week. Now I am not making much better than expenses. while the Pastime is losing money. The Motion Picture Patents Co. is supposed to be a protection. there is no protection in granting two licenses in so small a town, and it is now up to the Patents Co. to cancel the Pastime license as I am the oldest house, and the first man on the Pacific coast to forward the \$10.00 to the Patents Co. If the Pastime is allowed to run on as he is now, and use the Patents Co. films.

3

4

I will be compelled to use the Independent service, as I cannot compete with him, because his house is under

- 1 the control of Turner and Dahnken. and I have good reason to believe that Turner and Dahnken are sole owners of the Pastime in Ukiah.

Do not ask me to discontinue the changing of the names, unless my competitor is made to discontinue also. It is not my intention to do anything to violate any of the Patents Cos rules, but it is not right to hold me down and let another have full sway.

I have always stood by the Patents Co. and look to them for protection.

- 2 Trusting immediate attention to this I remain,

Yours respt.

C. A. RIFFE,
San Rafael, Cal.

By Mr. KINGSLEY:

Q. I show you a letter dated Frederick, Md., May 18th, 1909, and signed Keller Bros., by Wm. O. Keller, and ask you if you received that letter? A. I did.

- 3 Mr. KINGSLEY: I offer it in evidence.
Mr. GROSVENOR: I make the same objection to it.

Defendants' Exhibit No. 57.

Letterhead of

THE KELLER COMPANY,

12 North Market Street.

Frederick, Md., May 18, 1909.

- 4 Motion Picture Patents Co.,
80 5th. Avenue,
New York City,
New York.

Gentlemen:

We have a grievance to make and it is as follows:

Your company is exacting of us a Two (2.00) dollar license fee per week taking in consideration a large amount of money paid to you in license fees we think it no more

than right that we should have protection for amount of money paid. 1

That is when the films is rented to a motion picture concern for that perpose to be a Five (5) cent show and nothing else but a motion pictures and song slides should be allowed under your license.

We have opened up as you well know a motion picture show and are running as such, but we are at this time placed in a position to be either compelled to shut up our place or put on a vaudeville which we cannot afford to do for Five (5) cents only at a loss, as the seating capacity of our house is 200 and standing room 50. 2

Messrs. Pierce & Scheck are running the City Opera House with 2 reels and did have one vaudeville for Five (5) cents now they have arranged to put on a different vaudeville every night for Five (5) cents.

This is as we understand to try to close us out of business but if we chose to keep our house open we are financially strong enough, but we do not think it fair for the Motion Picture Patents Company to allow their license to be used as a motion picture show and vaudeville for Five (5) cents. 3

Now I should think that you would require all shows running under your license to be compelled to charge no less than Ten (10) cents for motion picture show and vaudeville combine.

If you will do this we will be put on an equal basls.

It is not our object to run anybody out of business but after paying you a license there should be some concessions granted as per above letter.

We would like very much to hear from you on this matter at an early date. We are,

Very Respt., 4

KELLER BROS.,
By Wm. O. Keller.

By Mr. KINGSLEY:

Q. I show you a letter, dated Baltimore, Md., July 23rd, 1910, and signed Hood & Schultz, and ask you if you received that letter? A. I did.

- 1 Mr. KINGSLEY: I offer it in evidence.
 Mr. GROSVENOR: Objected to on the same grounds.

Defendants' Exhibit No. 58.

THE CARROLLTON,
1203-1205 West Baltimore St.,
Baltimore, Maryland.

July 23rd, 1910.

- 2 Motion Picture Patents Company,
 80 Fifth Avenue,
 New York.

Gentlemen:

Your letter of the 21st. Inst. Received. We have filled out the blank you sent us in reference to the Black Cat Theater, and it is enclosed herewith.

- If you will look over your file you will find that we sent you a letter sometime ago in reference to this very place, your record #993 will throw a little light in regard
3 to this place also.

The Black Cat open directly opposite to us, and put on licensed films and took service from Pearce & Scheck, Tom Moore, and Miles Bros. While taking service from Pearce and Scheck they boasted to us that they were not paying license fee, although they were receiving each week from your office the postal card receipt.

- In May, 1909, one of us were in New York, and we got from your office over the telephone that The Black Cat people stood very badly on your books and had not paid their license, and you would see that would never get license
4 films again.

This is their object, they want to put on first run pictures to get ahead of us and the Aladin, which in the first place they cannot afford to do, as their place has a bad name, and few first class people go there.

They have tried all sort of means to make this place go, but they have never succeeded.

They run vaudeville, and four and five reels of pictures, they give away ice cream pies, have pie eating con-

tests, have amateur night, together with some arrests, while we run nothing but pictures and a song. 1

We have about a third run of pictures for our first reel, and a ten day run for our second reel, which is the best we can afford to take, and if these people are granted a license to run licensed pictures it hurt us very much together with the Aladin, and we will be forced to take on independent pictures.

We are the oldest exhibitors in the west end with the exception of Pearce and Scheck's west branch, and we feel that there is some protection due us, as we have always paid our service and license fees promptly. We live in the west end and know every body, which is one reason we are doing as well as we are. You know the picture business is not as good as it was a year ago, and we have to hustle a little more than we did a year ago. These Black Cat people have been running independent pictures for nearly sixteen months, and while we know you are anxious to get all the people you can to run license films, yet if they got them it would only be for a time, as said before they never know what they are going to do. 2

At present they are running some sort of a film exchange, and not doing much with it, but they had the nerve to ask us to take service from them. They are always got their eyes on our place, and sending some one over to see what crowd we have in our place. 3

These things look funny, and are not very pleasant.

If you want to know a little more about them ask their landlord, as I think he can give you a little information about them.

If you care to know any more about us, we refer you to our landlord the Mercantile Bank, also the following, Miles Bros., Tom Moore, Lewis M. Swaab, and last but not least Pearce and Scheck. 4

By the way, just a word about Pearce and Scheck.

Their West Branch is one block from us, and they know about what pictures we get, so they always put them on a night or two before we get them, and then tell our operator about it, and say they are going to keep on doing it until we take service from them.

They are doing the same thing on Broadway to a party that gets our pictures after we have had them. While they are doing this their customers are suffering, and ask-

1 ing for better service and pictures which I understand they are paying for. Three of their customers have gone independent, The Red Mill, The Crescent, and The Blue Bell, and of course you know why.

We wish we had the time to run over to New York and explain the picture situation in Baltimore to you, but you would be doing a good thing if you would send one of your men here to look into it, and we would be very glad to see him and give him what information he might want.

2 When Miles Bros. license were cancelled, we went to Pearce and Scheck, after they had sent us special deliveries, etc., but they wanted such a high price for their service, and then too they could not give us what we wanted, they offered us something like thirty day pictures, and of course after they had used them themselves at their place just one block from us.

We hope you will pardon us for burdening you with this long letter, but we thought it best for you to know all we could tell, so we ask you to treat all of the contents of this letter confidential.

3 We sincerely hope you can see your way clear to refuse the Black Cat Theater a license, as I am sure it will pay you in the end.

We will be pleased to hear further from you in regard. Thanking you for the consideration, etc., we are,

Very truly,

HOOD AND SCHULTZ.

See your letter to us about six or eight months ago, in which you said our protest would be considered, if these people applied for a license.

4

H. & S.

By Mr. KINGSLEY:

Q. I show you a letter, dated Butte, Montana, April 17, 1911, and signed W. J. Swarts, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Objected to on the same grounds.

Defendants' Exhibit No. 59.

1

Letterhead of

MAJESTIC THEATRE

Butte, Montana April 17, 1911.

Motion Picture Patents Co.,
#80 Fifth Avenue,
New York City.

Gentlemen:—

I have received numerous requests from your company relative to the different picture houses in Butte—also my own house, the Majestic Theatre—and they lead me to believe that you are not very familiar with conditions in this city.

2

In connection with the Majestic Theatre I am running the Orion Picture house—with a seating capacity of twelve hundred people—and am using Independent pictures there. I use Association pictures in the Majestic whenever available and would be very pleased to be able to run the same make of pictures in the Orion if it were possible to secure them, but owing to the Montana Film Exchange controlling the situation here in running their Exchange to further the interests of their own picture houses, it is impossible under these conditions for exhibitors to secure satisfactory service.

3

This same concern—Montana Film Company—are equally active in the Independent field here. Altho they are not publicly known as the Independent people, they are behind several Independent houses in the state, and own one house here showing Independent pictures. The picture business in this city and state is in a very unsatisfactory condition owing to this state of affairs and while I much prefer running Association pictures in both my houses I cannot do so under present conditions.

4

Very truly yours,

W. J. SWARTS.

1 By Mr. KINGSLEY:

Q. I show you a letter, dated Minneapolis, Minn., June 23, 1909, signed by A. J. Kavanaugh, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Objected to on the same grounds.

Defendants' Exhibit No. 60.

2 Letterhead of
GEM FAMILY THEATRE CO.

Modern Vaudeville

Minneapolis, Minn., June 23rd, 1909.

Motion Pictures Patent Co.

New York.

Gentlemen:

3 Enclosed find form in reply to yours of recent date and as you have seen fit to ask me to answer this question a few words explaining my position will not be out of place I hope. During the past year I have been compelled to change Film Exchanges several times in order to protect myself and my business.

4 Mr. Van Duzee owns all the Picture Houses in this City with one possible exception and naturally he is going to favor his own Houses by giving them the best he has and in the meantime I get what is left. I was doing fairly well with Laemmle until he turned Independent and then I went back to Van Duzee and I shall no doubt have to stay with him until I can see my way clear to improve my service by doing business with some other Firm. I am not writing this as a protest but merely to explain my reason for changing. You can appreciate my position here and how hard it is for me to get what I want even when I am willing to pay for it.

Yours Respectfully,

A. J. KAVANAGH.

By Mr. KINGSLEY:

1

Q. I show you a letter, dated St. Paul, Minn., November 16, 1910, and signed Gaiety Theatre, Otto N. Rath, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I make the same objections to it.

Defendants' Exhibit No. 61.

Letterhead of

2

THE GAIETY THEATRE

St. Paul, Minn. Nov. 16th, 1910.

Motion Picture Patents Co
New York, N. Y.

Gentlemen:

We are taking the liberty of addressing another letter to you regarding our local conditions, as we do not believe we are getting a square deal. As we wrote you before we have the largest Picture house in this city, a seating capacity of 700 and situated in the heart of the city.

3

Owing to the fact, as we believe, that the agent of your exchange in Minneapolis has a personal interest in various theatres in this city, he informs us, for this reason or some other, that he cannot supply us with first run stuff, although he supplies the "Alhambra" with such service, and the owners of this theatre are running an independent house in the same building as we will show on a small diagram (Diagram in pencil.)

The Alhambra has also run independent pictures along with their licensed program also have shown several reels of pictures before the date of release, through the courtesy of the exchange. During all of this time we have been staunch adherents to the ranks of the licensed manufacturers and this in spite of the fact that our service came from the Western Film Exchange of Milwaukee and consequently could not get actual 1st run films and thereby were placed at a disadvantage with our competitors, as when our programs did conflict we were one day late.

4

Since the Western Film Exchange has gone to the In-

1 dependents, we were forced into their ranks, and are now running Independent films, as much as we regret to do so. We have immediately corresponded with the General Film Co. 85 Dearborn Street Chicago relative to licensed service, but in reply to our telegram received the following ans.

“Impossible to furnish first run service sorry”

2 In their letter which followed they explained that they could not supply 1st Run as they could not ship before eight o'clock of day of release—etc. suggesting that we use older stuff. All this in view of a competitor within one half block, using generally 3 1st Run pictures. How would suggestions of this kind strike any real live energetic and wide awake business man? Answer yourself. We have \$200,000 capital if necessary have the largest house in the city, keep it strictly up to date and modern, and a pleasure for any one to visit. We are willing to pay for the service we exact, but cannot get it. We have invested over \$25,000 in our place and this is only a beginning. We want the licensed service and write you this letter in an endeavor to get the service, that will place us on a par with our competitor whether an exchange man has an interest in the house or not.

3 All we want is a square deal, and if the money we have paid in the past and are willing to pay in the future, is not wanted by the manufacturers of the Motion Picture Patents Co. products, then I presume we will be forced to remain in the ranks of the Independents and boost their products and boost hard.

A reply will be greatly appreciated.

Respectfully,

4 GAIETY THEATRE,
Otto N. Rath.

By Mr. KINGSLEY:

Q. I show you a letter, on the letterhead of the Motion Picture Patents Company, dated February 21, 1910, at the foot of which is a communication, dated Blackfoot, Idaho, of February 25, 1910, and ask you if that letter at the top of the letterhead was sent from the Motion Picture Patents Company's office, and if the letter at the bottom of the

page was received by the Motion Picture Patents Company, and by you, as its Vice-President? A. The letter at the head of the page was sent by the Patents Company, and the communication added on to it, was received by me.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Objected to on the same grounds stated above.

Defendants' Exhibit No. 62.

MOTION PICTURE PATENTS COMPANY.

80 Fifth Avenue,

New York City.

New York City, February 21, 1910.

Kestner & Young,
Isis Theatre, 2176
Blackfoot,
Idaho.

Dear Sir:

You will note that the name of the theatre, exhibitor or address is missing on the enclosed form. Please supply the omission and return promptly.

Very truly yours,

MOTION PICTURE PATENTS COMPANY.

By FH

FH/KVB.

Enc. (1 form)

Blackfoot Idaho 2/25/10

Dear Sirs:

We would like some information we have been with the Patents Co. from the 1st and we have taken service of Trent & Wilson of S F C. Utah but was not satisfied & changed to the Progressive of Odgen. Trent & Wilson informed us they would put service in the other house here who is Independent. We were under the impression that they could not furnish an Independent house, but they started her house with films so she has advertised both Independent &

- 1 Licensed Films both we do not see any use of paying \$2 per week. If any house can run The Patents Co's Films that want to would we be allowed to run Independent Films if the other house is allowed to? The Progressive Co. said they would not furnish us with Films if we run any Independent. It does not look fair to us we paid \$10 at the 1st & \$2 per week ever since, and here the other house who has been Independent all the time and next door to us runs the same make as us and also Independent.

Yours,

2

KESTNER & YOUNG
Isis Theatre.

By Mr. KINGSLEY:

Q. I show you a letter on the letterhead of the Princess Theatre, of Bellefontaine, Ohio, dated May 3, 1910, and signed The Princess Theatre, per A. R. Filson, and ask you if you received that letter? A. I did.

3

Mr. KINGSLEY: I offer that letter in evidence.
Mr. GROSVENOR: Objected to on the same grounds.

Defendants' Exhibit No. 63.

Letterhead of

THE PRINCESS THEATER.

Bellefontaine, Ohio, May 3, 1910.

The Motion Patents Co.
New York City.

4

Gentleman:—

I am writing You as a licensed Exhibitor for protection, I have run a licensed house ever since the M. P. P. Co. was formed.

We have a town here of about 8500 Population and have Two show houses both Licensed all our town will support.

Now Mr. Melchoir of the Ohio Film Supply Co. through his representative Mr. Cohn contemplates starting a Picture Show in the Opra House, just through spite work only, as

Mr. Volk nor myself will take service from him, we were both with him for service and it was any thing but satisfactory My contract with him was for 20 day's servise, he would send me one Film 1 or 2 day's old and the next one would be 45 or 50 day's old and we could never get any thing we wanted nor get him to do any thing he agreed to do, so we were compelled to cease taking servise from him. 1

Mr. Volk had the same experience with him and was compelled to go Independent and remained so untill I persuaded him to come back Licensed.

We are both taking service from the Lake Shore Film Supply Co. of Cleveland Ohio, and our service is very satisfactory indeed they have lived up to there Contract to the letter, now Mr. Melchoir because we will not take service from him is going to start the third Picture show in the Opra House and our town is to small to support three houses. 2

I am appealing to the M. P. P. Co. for protection by refusing to grant Mr. Melchoir or any one else a license.

I had a talk with Mr. Smith the proprietor of the Opra House and he informs me that Mr. Melchoir has talked several times to him over the Phone in regard to a lease and he thought they would get together on it, so I know it is no bluff on Mr. Melchoir part. We have the Picture business systemised now so that there are some pleasure in running a house and to have one of your own Licensed Exchanges but in and spoil it just because we will not take service from him. We feel that Your protection is due us. 3

Hoping you will take this matter up with your Company immediately we beg to remain

Yours truly,

THE PRINCESS THEATRE

Per A. R. Filson. 4

By Mr. KINGSLEY:

Q. I show you a letter, on the letterhead of Harry R. Rand, with a receiving mark dated June 24, 1910, signed by Harry R. Rand, and containing a postscript, signed "H. R. R.," and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections.

1

Defendants' Exhibit No. 64.

Letterhead of

HARRY R. RAND.

Motion Picture Patents Co.,

80 5th Ave,

New York.

Gentlemen:—

2

3

4

I have received notice from the Denver film exchange that the license for the Empire Theatre, Salt Lake City, had been cancelled, and shipments of films stopped without any notice except by telegram from Mr. Buckwalter, who said he had to stop shipments immediately. Having always been loyal to the Patents Co. and always lived up to their rules and regulations in every detail I feel that this treatment of the Patents Co. towards me is very unjust and have a right to know why this action was taken. I defy anyone to show in any way where I have not lived up to the regulations of the said Company. I therefore ask you to give me some explanation as to why I should not have license to run patents pictures in this house and enjoy the same privilege others have who are running five cent theatres not more than 400 yards away from mine on the same street. My house does not conflict with any of the other theatres in my neighborhood, which charge 10 cents but give vaudeville in addition to moving pictures. Mr. Florence, the manager of 5 different theatres in this city, has made a public boast he would put me out of business. Commencing eight months ago when I first leased the Empire, he furnished the cash for attorneys' fees which tied this place up for some six weeks and prevented me from opening during that time. Mr. Florence then, as now, was the instigator of all the trouble as he objects to a 5 cent theatre in this city. He seems to have forgotten that at the time he was trying to get possession of the "Isis" theatre here he sold two tickets for a dime, thereby giving admission at 5 cents per person either at the "Luna" or "Elite." After getting possession and having no opposition to speak of he raised his price to ten cents. You must understand that the letter written by Mrs. Rand to him for me (as I am laid up with a broken arm) in

which she said we would open many other theatres as the opportunity presented was simply written as a rebuke to him as he has antagonized us greatly by many threats of what he could do and would do in the way of putting us out of business. All the managers in town were informed of this letter and how it had been forwarded on to you by him and what the consequences would be. I do not desire any controversy with this man nor with you on this matter. All I want is a fair deal and have you investigate me and my way of doing business and ask you to treat me accordingly. I am prepared to furnish you with affidavits, that will convince you that I am much more entitled to a license from the Patents Co. than this man is who has boasted he would put me out of business. However, I prefer not to get in any litigation over this matter with him, but being a free American born citizen with equal rights I will have to demand justice at your hands.

Trusting you will appreciate the position I am now placed in, and thanking you in advance for making a thorough investigation of this matter, I am,

Very Respectfully Yours,

HARRY R. RAND.

P. S.—I would respectfully refer you to the mayor of our city, any of the bankers and the public in general as to my standing and the character of my shows. The best evidence of the appreciation of the public is in the business I am doing, which is twice as much as any other house in town.

P. P. S.—In fact my business has appealed so attractively to Mr. Florence he has made several propositions to me for a partnership, all of which I refused. One of his recent propositions was to open a 5 cent house in Ogden at which he proposed to stand all the expense but did not want to be known in the venture at all as he had formed a combine with the Progressive film exchange there. This, and many other matters which would probably interest you greatly I am willing to put in affidavit form.

In the meantime, however, pending your investigation I pray you will wire Mr. Buckwalter to furnish me the Patents service, which is the best in the world. In case I

- 1 continue to do business with you, I understand Mr. Florence has boasted he would turn all his houses into 5 cent shows and thus put me out of business. Please don't look upon this as a comic opera or Bouffe, as I assure you notwithstanding its comic aspect I am serious in all I have written.

H. R. R.

By Mr. KINGSLEY:

- Q. I show you a letter, dated October 28, 1910, on letter-
2 head of Harry R. Rand, and signed Harry R. Rand, and ask you if you received it? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 65.

Letterhead of

HARRY R. RAND.

- 3 Motion Picture Patents Co.,
80 Fifth Ave.,
N. Y. City, N. Y.

Gentlemen:

- On my return from the West some two or three weeks ago, I was informed that the Florence theatres had been running films before the release day. My information came from one of the operators at the said shows. Not taking any stock in his remarks, I made inquiries from Mr. Hatch, of The La Vista Theatre, who informed me certain reels
4 had been run at The Isis or Luna before release day. I reported this to Mr. Buckwalter of Denver, he forwarding same to you. On receipt of your letter of the 22nd inst., I made investigation regarding the matter, but everyone I asked about the pictures seemed to have forgotten or did not know anything about them. I called on Mr. Hatch and told him I would like to get the information regarding the matter, as I had made a wager on the information that had been handed me on my return. Today he brought me the enclosed slip, telling me this was one of the reels run and the date it was run. I think there was another

reel run before release but have no way of finding out now. I trust you will not use my name in this matter, as I am living in this city and don't care to get in any mix up with this outfit unless it is necessary.

Respectfully,

H. R. RAND.

10/28/10,
S. L. City, U.

1

2

By Mr. KINGSLEY:

Q. I show you a letter, dated October 14, 1910, and signed H. R. Rand, and written on the letterhead of H. R. Rand, under the title "Mile High Kennels," and I ask you if you received that letter through the mail? A. I did.

Q. That letter is not addressed to the Motion Picture Patents Company, but it is addressed to Mr. Buckwalter, manager of an exchange in Denver, Colorado. Was Buckwalter's exchange a licensee of the Motion Picture Patents Company? A. It was.

3

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 66.

Letterhead of

MILE HIGH KENNELS, RE'G.

High Class French Bull Dogs.

10/14/10.

Salt Lake City, Utah.

4

My dear Buckwalter:

I don't want to start anything, but to give you some idea of how Florence does things to suit himself. He run one picture Saturday and Sunday that should not have been released until Monday, and another one Saturday and Sun-

1 day that should not have been released until Wednesday.
How about it?

H. R. R.

Written on back: M. P. P. Co.: This letter from Rand of
Salt Lake. It explains itself.

Denver, 10/17.

BUCKWALTER.

By Mr. KINGSLEY:

2 Q. I show you a letter, dated Canandaigua, N. Y., March
2, 1909, and signed Charles A. Persons, and another letter,
dated Canandaigua, N. Y., March 5, 1909, signed Charles
A. Persons, and ask you if you received these two letters?
A. I did.

Mr. KINGSLEY: I offer those letters in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 67.

3 Canandaigua, N. Y., 3/2/1909.

Motion Picture Patents Co.,

Gentlemen:

4 I received from you yesterday notification that the Li-
cense for the term from Mar. 8th to Apr. 1st would still
be \$2.00 per week. now in regard to this I wish to say that
I think I for one am being discriminated against for this
reason. at the Happy House Theatre which has just changed
hands being now run by a Mr. Collins they have a seating
capacity of 600 people. I have a seating capacity of 104.
Yet I am compelled to pay just as much as they are. an-
other thing under the new management who is I under-
stand a relative of Mr. Powers of the talking Machine Co.
of Rochester he is running 4 Reels of practically new pic-
tures and 3 songs to each show changing pictures and
songs every day. in this way using 24 Reels of pictures
every week in this way compelling me to run either 1st or
2nd run pictures or else run the same pictures which they
have just shown. and you can readily figure out with them
running 24 Reels a week I have no look in at all. unless

I do run 1st or 2nd Run pictures which I cannot afford to do in as small a place as this is (about 7000 population). My theatre was the first one to be opened here and I have always run licensed film but unless there is some change, I shall be compelled to change to the Independent service. this I do not wish to do as I had much rather run Licensed film the whole thing looks to me like a scheme to put me as one of the small fry out of business. now you informed me in one of your letters that you would be glad to receive any correspondence relative to the good of the business I would be very glad to hear from you on these matters.

Yours Respectfully

CHAS. A. PERSONS.

Bijou Dream,

Canandaigua, N. Y.

Defendants' Exhibit No. 68.

Canandaigua, N. Y., 3/5/09.

Motion Picture Patents Co.

Gentlemen:

Since writing you on the 2nd. In regard to the Happy Hour Theatre here. I have found out that Mr. Collins is not the owner of the place at all but is merely the representative of Mr. Powers. Owner of the Talking Machine Co. of Rochester, N. Y. who is the real owner of that theatre. Now Mr. Powers has been after me for some time to take service of them but as I have been satisfied with the service I have been getting from the Pittsburg Calcium Light Co. of Rochester, I did not see my way clear to stop taking service of them, in order to satisfy him. as he was already at that time supplying Happyland Theatre here, but who is now running Independent pictures for the reason they could not get good service from the Talking Machine Co. Now it looks to me, as if the Talking Machine Co. ought to remain in the Film renting business and not go into the exhibiting business in order to get back at those who do not see their way clear to do business with them. as I wrote you on the 2nd, this place

- 1 is not large enough to support 3 theatres in the first place
as I told you in my last letter they are in order to kill
the business of anyone else in town, making of this place in
reality better than even a first run show town putting on
first and 2nd run pictures running three and four reels
to a show and changing pictures every day, for example
last Night they were showing the Biograph Picture A Fools
Revenge, and Selig's picture The Mad Miner which as you
well know will not be shown anywhere else until to-day.
as I told you in my last letter with them using from 18 to
2 24 Reels of this class of pictures a week that it does not
leave anything but repeaters for the balance of us to show
here if we continue to use Licensed films, which I prefer to
do, if I am protected by you. so I think it is up to you to
do something in this matter and give me the protection for
which I am paying. I also think it would be no more than
right for the Patents Co. to see that a rental exchange
does not go into the Exhibiting business, in order to kill
the business of those who do not care to do business with
them, especially where the exhibitors are using Licensed
Film, as I have always done, but which I will be unable to
3 do, if things are allowed by you to go on much longer in
this way. I am enclosing Am. Ex Money Order, for Six
dollars, for License to Apr. 1st with the expectation that
you will afford me protection in this matter. I am and
have been for some time using pictures from 4 to 8 days
old, so you can readily see what this means to me, it
simply means I will be unable to get any pictures which
have not been shown here within a week, they using 18
to 24 Reels of 1 & 2nd run stuff a week, unless I change
over to the Independent's which I do not wish to do,
unless you protect me as you have informed me in your
letter you would do, expecting an early reply to these
4 two letters, I remain

BIJOU DREAM THEATRE,

Chas. A. Persons.

By Mr. KINGSLEY:

Q. I show you a letter, dated, The Dalles, Ore., Feb.
18, 1910, signed Lew F. Cullins, and another letter, dated

The Dalles, Ore., October 14, 1910, signed Lew F. Cullins, 1
and ask you if you received those two letters? A. I did.

Mr. KINGSLEY: I offer those letters in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 69.

Letterhead of

THE CASINO THEATRE.

The Dalles, Ore. Feb. 18th 1910. 2

Motion Picture Patents Co.

New York City.

Gentlemen:

As an Licensed Exhibitor of the Patents Co. I write you
to ask if you can tell me what is to soon become of a lot of us
old licensed exhibitors in this Pacific northwest when the
only Licensed Exchanges here are owned by one Company.
And said Company are putting in new houses and are organ- 3
izing new amusement companys with big capital to buy build
or steal houses in every town, with S. Morton Cohn as Presi-
dent, who as you know is President of the Amalgamated Film
Exchange of Portland Ore and Seattle Washington, and
whose desire is to control the entire licensed picture busi-
ness of the Pacific Northwest. And it is only a matter of a
very short time until they will own all of the houses their
exchange can supply with a service then us old exhibitors who
will not sell to their company at a big sacrifice will be cut off
with out service, and will be forced to go to the Independents
for Films. At the present time they are sending the cream
of the Licensed output to their own houses and we take what 4
is left. I know what I am saying as they own the other house
here, and while I pay more per reel than they charge up to
their own house, their house gets 1/3 later releases and bet-
ter service than I do. I have the records of every reel run
at both houses, and there has been many times that my films
did not arrive on time, but at their own house they have never
failed to have their shipments here on time, and when my
shipments come in one or two days late they make me pay full
price for the weeks service. Now I am the man that made the
picture business what it is in this town, it was my money

1 that educated the people here, and I do not intend to let
any one man run me away when I was first in the field but
when your exchange stoops to petty larceny and dark lantern
methods why they can do lots of damage. So far I have done
the business as my theatre is a palace beside their house, but
when I am compelled to run nothing but the old junk they
will give me, then I expect to lose my business, and will be
forced to go over to the Independent mfgs. for a service, as
the Amalgamated Film Exchange is the only place in my ter-
ritory where I can get a licensed service. Can you give me
2 any advice or encouragement.

Yours truly,

LEW F. CULLINS,
The Dalles, Oregon.

Defendants' Exhibit No. 70.

Letterhead of

3 THE CASINO THEATRE.

The Dalles, Ore., Oct. 14th 1910.

Motion Picture Patents Co.

New York City.

Dear Sir :

Your card of 8th inst inquiring if I had closed or was I
using Independent service, and in answer to same will say
that I discontinued Licensed Films Sept 21st not that I
wanted to do so but being compelled to do so on account of
4 the very unfair treatment that I received from the Licensed
Exchange. I was paying \$40.50 a week for 6 reels and 3
songs, and the House here belonging to the Peoples Amuse-
ment Co paying \$50.00 per 9 reels 3 songs and 3 set of slides
and their house getting 50% better service than they gave me,
therefore I was forced out, and am now getting a much finer
service than I ever got before on the same money.

Yours,

LEW F. CULLINS.

By Mr. KINGSLEY :

1

Q. I show you a letter dated Portland, Oregon, November 12th, 1909, and another letter dated Portland, Oregon, December 15th, 1909, and both signed by J. T. Fleishman, and ask you if you received those two letters? A. I did.

Mr. KINGSLEY: I offer those two letters in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 71.

2

Letterhead of

THE NOVELTY THEATRES.

Portland Nov 12th 1909

Motion Picture Pat. Co.

80 Fifth Ave.

N. Y.

Dear Sir :

I want some information about the treatment we as Exhibitors and Licensed Houses we are receiving here, in the 1st place Morton Cohen has 6 houses here he uses the best Films first then Houses not controlled by him gets them afterwards also Films that were Manufactured long before your Ass'n was formed now can they do that to houses that pay a License make me use old worn out Films. I am located here now 2 years other Houses have sprung up all around me now they tell me to bid for better stuff and if my bid is higher as other near Houses I can have the stuff now they only buy about 20 Reels if that much and they themselves started using 14 Reels per week in their 5c Houses of course the balance of us had to follow suit consequently there is nothing but Repeat or old stuff I wanted to change wrote to Frisco they told me they could not furnish me as I was not in their Territory Seattle they have bottled up also. I would gladly take Ind. Films but as yet can not get 14 Reels per Week I am speaking the sentiment of 6 or 7 others please advise

3

4

Yours &c

J. T. FLEISHMAN
(231 Morrison St.)

1

Defendants' Exhibit No. 72.

Letterhead of

THE NOVELTY THEATRES.

Portland, Ore., Dec. 15th, '09.

Motion Picture Patents Co.

New York, N. Y.

Dear Sirs—

- 2 Your letter of the 8th at hand in reply will say that the reason I did not answer your former letter was you did not answer the questions I asked you then, was I compelled to use old worn out Films made before your Ass'n was formed and pay the fee of 2.00 per week when I could go to Laemmle and get better stuff at Less Money without a fee the correspondence I had with San Frisco was 2nd 3rd and 4th run stuff was prohibitive to me in price I told Stevens who was with the Edison Co before the consolidation told me that I could not get Ass'n Films from Frisco as that was in this city Territory so I know there is an understanding the correspondence I had with the Frisco Exchange I have destroyed
- 3 I had been taking Films from Cohen for longer as 1 1-2 years and before the Merger he treated me O. K that is he would give me some Films he had not run here in his own houses but since the Merger he runs everything first except some 1st run the Nicolodian gets the price I paid before the merger was 30.00 per week for 14 reels after the Merger it was raised to 37.00 2 weeks ago he raised my price to 42.00 but I dont get the old stuff now I think you must have written him about it at any rate there should be competition here as they are too sassy I dont mind paying the price but I dont think
- 4 Cohen should have the right to show everything first just because he has the Exchange here and as soon as I can get good Ind Films I will make the change at Roseburg I am using Ind as I can get 6 Reels per Week at my 3rd St. House the Majestic I use Ind and will here at the Novelty as I say when I can get 14 Reels pr. Week now I dont want you to use my name as Cohen and I are good friends but I dont like the way he does Business since he has the whole thing to himself.

Yours &c

J. T. FLEISHMAN.

By Mr. KINGSLEY:

1

Q. I show you two letters, one dated Astoria, Oregon, May 3rd, 1910, and the other dated Astoria, Oregon, August 16th, 1910, and both signed by Henry Newman, proprietor and manager, and ask you if you received those two letters?
A. I did.

Mr. KINGSLEY: I offer them in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 73.

2

CRYSTAL THEATRE.

Astoria, Ore.

May 3, 1910.

Motion Picture Patent Co.

New York.

Gentlemen:

Yours of the 29th inst. at hand. In reference to your letter to A. S. M. at the time I enclosed your information sheet, of the Star Theatre, will state, that this Theatre, succeeded, the Bakeronian Theatre is now owned and controlled by the Peoples Amusement Co. of Portland, who are none other than the Amalgamated Film Ex. with Mr. John Shortley, resident manager.

3

The so called Peoples Amusement Co. are starting these houses in Oregon and Wash. We have no protection whatever, and they are showing partiality to their own houses, with films.

I think for the 2.00 per wk we pay the Motion Picture Patent Co. we are entitled to a little protection.

4

Hoping the enclosed information is satisfactory.

Yours very truly,

CRYSTAL THEATRE.

Henry Newman,

Prop. & Mgr.

Defendants' Exhibit No. 74.

1

CRYSTAL THEATRE.

Astoria, Ore.

Astoria, Oregon, Aug. 16, 1910.

Motion Picture Patent Co.

New York City.

Gentlemen :

2 Since the Peoples Amusement Co. of Portland, Ore., took over the Star Theatre in Astoria, Ore. the Amalgamated Film Exchange of Portland have not been doing just right with me, in furnishing me films, as they are showing partial to the Star Theatre. Mr. Winstock, General Manager of the Peoples Amusement Co., sees every picture run off, before the release day, at the Amalgamated Film Ex. in Portland, and picks out the best films for their own houses, and I have to take what they don't want. What's more, I never get a chance at the special releases, as they use them all in their own house.

3 I have been handling the Associated film ever since the Association was organized, and always prefer the Associated films and do so yet, but, for my own interest, unless I get some protection from you, I will be forced to handle the Independent films.

I know you are aware the People's Amusement Co. and the Amalgamated Film Exchange are the same as one concern.

I am paying the Motion P. P. Co. \$2.00 per week license, for this I am supposed to get protection, but I don't see that I am, as stated before, I have to take the films they don't want.

4

I have written you before in reference to this matter, and never received a reply in regards to same.

I kindly ask you to let me know by return mail, if you can help me in getting just treatment from the Amalgamated Ex. of Portland. If not, as stated before, I will go to using Independent Films.

Awaiting an early reply, thanking you in advance, I am

Yours very truly,

HENRY NEWMAN,

Crystal Theatre.

By MR. KINGSLEY:

Q. I show you a letter dated Portland, Ore., Feb. 8, 1910, signed B. E. Gellerman, Manager, and ask you if you received that letter? A. I did.

MR. KINGSLEY: I offer it in evidence.

MR. GROSVENOR: Same objections.

Defendants' Exhibit No. 75.

Portland, Oregon, Feb. 8, 1910.

The Motion Picture Patents Co.,
New York City, N. Y.

Gentlemen:—

While having received communication from you asking the cause of our discontinuing to use your films, we have thought it useless, up to the present time, to make any reply until some concerted action could be taken by the Independent houses (that is, the independent theatres not owned by the Amalgamated Film Exchange could be taken).

As we are the Pioneer Moving Picture Theatre, in Portland, and one of the oldest in the Northwest, I desire to say in the beginning that I will cheerfully verify to a representative of the Motion Picture Patent Co., all of the following facts:

First. The Amalgamated Exchange owns and operates a very large number of theatres, both in Portland, Tacoma and Seattle, as well as in the smaller country houses and all films received by them are first tried on the screens and those which are good are assigned to their own houses and those that are least desirable are assigned to the theatres, which they do not own.

The matter of price does not apparently enter into consideration at all, as we have asked the Amalgamated Exchange to name their own price on first run stuff and the reply was that it could not be given to us.

It is evident, therefore, that the policy of the Amalgamated Exchange is not to furnish films from the Motion Picture Patents Co., to any except their own houses, or if they do furnish them it is after they have been displayed in their own houses and are anyway from four to the 25th run.

- 1 I am now taking Independent service and am well pleased with the films, but had I been accorded decent treatment and given a fair deal, I should probably never have changed from the licensed films.

Yours truly,

B. E. GELLERMAN, Mgr.,
Nickelodeon, 130 6th St.

By Mr. KINGSLEY:

- 2 Q. I show you a letter dated Hartford, Wis., October 6, 1909, signed Ed. J. Wagner, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer that letter in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 76.

EMPIRE ELECTRIC THEATRE.

Ed. J. Wagner, Prop.

- 3 Hartford, Wis., Oct. 6, 1909.
Motion Picture Patents Co.

Gentlemen—

- 4 The writer has been independent for some time but went over to the license Ex. hoping to git a better service and system for the welfare of the business as it was to be understood. Here is the Western Film Ex. in Milwaukee that i am dealing with they have theatres of their own and running same on pesentage. I wish to know how another man can go into the M. P. business if the Ex are allowed to do this. Now i am in a little town at present, been runing here for several months. Another party here from town started a M. P. a few months ago, with the intention of showing the writer where to git of at. As i understood that the M. P. P. Co. will not give a license for the second house in so small a town that cannot support 2 of them. The Western Film Ex. is also supplying them with films. Now if the writer cannot be alone with the license Ex. then he wishes to know.

Hoping you will favor the writer with a reply in regards
to this matter. 1

Hartford, Wis.

Truly yours,

ED. J. WAGNER,

By Mr. KINGSLEY:

Q. I show you a letter dated Racine, Wis., July 23, 1909,
and signed C. Jelier, Mgr. Did you receive that letter? A. 2
I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 77.

Dreamland Theatre
Racine, Wis July 23-09

M. P. P. Co.

New York, N. Y.

3

Gentlemen:

The Orpheum Theatre of this City Operated by the
Theatre Film Service Co. of Chicago Are using the entire
Output of the Licensed Factorys.

Changing Daily showing three Reels of Pictures and
two Songs for five cents, Admission.

Pictures are shown here on release Days thereby giv-
ing me no oportunity to show any Licensed Film that has
not been or is not shown at the same time that I can se-
cure it. 4

I am at Present using one Reel of Pictures and one
Song Changed four times a week, but find that no mat-
ter what I do or how I try to avoid using the same sub-
jects which they use they are sure to Block my way, As
we are but a short distance from one another, it makes it
very bad for me. I have endeavored to conduct my Place
as nearly right as possible, have always paid a good price
for film and if I were to treble my show, "which would be
nessasary to compete evenly" I could not aford to pay

1 even twice as much as I am at present paying nor could
any other party outside of a Film Exchange make the
other house pay, as it has been tried several times both
with Licensed and Independent Film, and I do not think
they are at present making any more then a fair rental for
the Film used I beg to ask if nothing can be done by the
Patents Co. to at least protect me on four reels per week.

2 Otherwise the Independents seems to be the only way
out of it for me. Something which I Frankly admit I
do not like to do although I have never seen any of their
products I was as you may determine the first Licensed
Picture house in this City, the first Picture house in this
City and have since being Licensed tried to Live up to the
Ideas of the Patents Co. having Spent the entire Profits
of the past years on improvements, having full confidence
in the Patents Co to Protect me against Just such Methods
as are now being used by the other house to get control
of the Picture business in this City such Methods do not
go to make for better Pictures neither does it increase the
sales of the Producers,

3 If I was driven out of business to Morrow or even if I
went Independent How long would they continue to show
first run film. I venture to say not one day. They Know
full well that if I can get Film that they can not block
me an I can get the business, for that reason they are
showing first run Pictures three to one is quiet a difference
especially when the same Picture is on at the same time
Still I am Making expences, but who wants to work for
nothing.

Trusting this will have the attention it deserves I am

Yours Truly

4

C. JELIER, Mgr.

By Mr. KINGSLEY:

Q. I show you a letter dated Rockford, Ill., June 10,
1909, signed W. Clarke. Did you receive that letter? A.
I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections.

Defendants' Exhibit No. 78.

1

Motion Picture Patent Co.,
N. Y. City.

Gentlemen:

We have three store front 5c theatres, two of us running high class service. The Theatre Film Service has undertaken to supply an outsider who has taken a lease on a spite theatre newly furnished, 800 seating capacity, which has proved a failure for Vaudeville, with Moving Picture Service, and are giving for 5c one reel 2nd run, one reel 2nd to 5th run and one reel 8 to 10th run, three reels daily change of practically new film, practically the entire output. Before they came we have been running two reels to a show daily change one to two week old film for our first reel. Now, gentlemen, such competition is unfair. No money for us, and their's is a game of freeze out. Now which is better for the manufacturers, to have three of us using copies, or only one using them, as we understand Mr. Skates of the Theatre Film Service holds stock of this Company that has butted in and none of us are able to get an Exchange who can spare film to equal the service, except at an exorbitant rental. It seems unfair, and we need protection. Cannot prices be so regulated that three new reels cannot be shown for 5c except under a penalty.

Yours very truly,

W. CLARKE.

By MR. KINGSLEY:

Q. During the period that you were Vice-President of the Motion Picture Patents Company, did you keep in touch with the correspondence with exhibitors, rental exchanges, and licensees? A. I did. I read almost all of it.

Q. And did you endeavor to keep posted regarding the course of business and the changes that were going on from week to week and month to month in the art? A. I did.

Q. Do you recall all the letters which I have just offered in evidence? A. I do.

Q. And you read them at the time they were received, did you not? A. I did.

1 Q. Did you receive many letters from exhibitors complaining of the conditions in the business? A. I did.

Q. Were these letters which I have just offered in evidence, a fair sample of the complaints received respecting certain phases of the business? A. They were.

Mr. GROSVENOR. I object to all this line of examination on the same ground that I objected to the introduction of the letters.

2 By Mr. KINGSLEY:

Q. Did you receive, and by you I mean the Motion Picture Patents Company, letters from time to time, complaining of the methods of distribution of motion pictures, complaining that the system of dealing in motion pictures was not satisfactory and led to unequal treatment of exhibitors? A. I did.

Q. And did you from time to time receive letters suggesting that some change be effected in certain phases of the distribution of motion pictures? A. I did.

3 Q. I show you a letter dated Toledo, Ohio, August 15th, 1910, signed Kent Film Service Company, and accompanied by a letter dated Tiffin, Ohio, August 10th, 1910, signed Hal B. Clarke, and ask you if these letters were received by you? A. These letters were received by me.

Q. Did they come at the same time and in the same envelope? A. Yes, they came attached together.

Mr. KINGSLEY: I offer them in evidence.

Mr. GROSVENOR: Same objection.

4 The papers offered are received in evidence and marked "Defendants' Exhibit No. 79," and are as follows:

Defendants' Exhibit No. 79.

1

Letterhead of

THE KENT FILM SERVICE CO.

Toledo, Ohio, August Fifteenth, 1910.

The M. P. Patents Co.,
80 Fifth Avenue,
New York City.

Gentlemen:—

We are enclosing herewith a letter which we are in receipt of from Tiffin, Ohio, and which explains itself, and shows the statements that the Ohio has made in reference to driving, licensed exhibitors to Independent.

We would further refer you to Charles Carlin, of the Grand Theatre, Galion, Ohio, who is taking service out of Cincinnati. He made the statement to us that Melchior said he would drive one of the houses at Galion, Ohio, Independent.

Yours very truly,

THE KENT FILM SERVICE CO,

17-K-MG

Letterhead of

HAL. B. CLARKE.

Tiffin, Ohio, Aug. 10, 1910.

Kent Film Service Co.,
Toledo,
Ohio.

Gentlemen:—

In reply to your letter reference to a statement made by a representative of the Ohio Film Exchange, I am free to state that their representative made the statement to me that they would drive one of the houses in Tiffin to Independent service, and that they would continue to shoot the new films to Fostona until there was something doing there.

I can state further that Mr. Speed of the Sigma Theatre wired the Ohio Film Exchange as follows "Positive instructions, ship but one new reel daily." This they disregarded

1 with the exception of but one day, and kept up the fight until
after Mr. Shower of the Royal Theatre quit exhibiting
licensed films.

Yours very truly,

HAL. B. CLARKE.

By Mr. KINGSLEY:

Q. I show you a letter dated Sacramento, California, December 19th, 1910, signed H. Wolff. Did you receive that letter? A. I did.

2

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 80," and is as follows:

Defendants' Exhibit No. 80.

Sac Calif. Dec. 19-10.

3 Motion Picture Patents Company.

Dear Sirs:

4 In a letter of Dec. 12th you asked if the Lyric Theatre, is the same Theatre that J. H. Thomas, is manager of. In reply I will say that Mr. Thomas has been out of the Lyric and has nothing to do with the Lyric, for the last year, I also wish to state, that about a year ago I took charge of the Lyric Theatre and was using license pictures before coming to Sacramento. I ran a house in San Francisco, and use nothing but license pictures for I have always prefer license picture to any other as I think they are far superior to other pictures but the exchanges in San Francisco ran things in such a manner that things were very unsatisfactory with me, no matter how I tried, or what I offered for service, I was sure to show pictures after the other houses, and the result was, that my business dropped away to nothing and had it kept up I would of had to close my place of business, and now while I am writing, it seems strange to me that a vast concern the same as the patents company can not arrange matters so that the exhibitor would get an even brake, as much as I would like to use license pictures

(“and I know a lot more like myself”) there is no way that I can see my way clear, for in a small town like, Sac. an exhibitor cannot afford to show pictures very day after the other’s houses, I was willing to even go so far, as to show them, three days out of seven, but I won’t stand for seven days out of the week and when ever the patents co. can arrange matters so that each house gets the same treatment I will be more than willing, to show patent picture. Now I know that my house is only a drop in the bucket, to the patent co’s business, still (as I said before) I know lots of others that prefere the license pictures) still it take several drop to fill the bucket hoping you see the injustice done the small exb. I will close.

Remaining Respect’ly Yours,

H. WOLFF

Lyric Theatre

Sacramento, Calif.

P. S. I even offered more money for the same service, that other houses was getting and the exchange, said they could not furnish it.

By Mr. KINGSLEY:

Q. I show you a letter dated Baltimore, Maryland, September 7th, 1910, signed John Carter. Did you receive that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked “Defendants’ Exhibit No. 81,” and is as follows:

Defendants’ Exhibit No. 81.

Balto., Md.,

Sept. 9/7/10.

Motion Picture Co.,
Gentleman.

Wer’e forched to go Independent, by the Moore Film Exchange. On account of the Service we have been getting has been satisfactory until the midle part of July.

After that time our second and third reels were the same

- 1 reels (Repeaters). We had, Going to the expence notifying by Phone from our city returning to us another reel. At times they would do so. holding our show back several hours.

Thinking best to make a complaint to the Patent Co.

He also wrote that we complained to the Patent Co. and in doing so he demanded we cancel service. We have the letters in our possession. We wrote him and phoned him numerous times and the answer we received was—this is all your contract calls for.

- 2 We were to get the same service as the Cresent Moving Picture Parlor at the same price. Our feature reel to be about fifteen Days old. (Sat. Sept. 31, show.)

The Way of the World. Feature 1.

An Uncle By Marriage.

Late for lunch.

Mothers choice. commercial.

- 3 no title, no sprocket holes, in a condition that it would not go through the machine. Second reel trifle better third reel which he calls Commercial which has been in the neighborhood 3 times you are aware of the above reels that we could not be successful by running a show like that.

Please answer this letter as soon as posibly.

Your Respectfully,

Per John Carter,

mgr.

The Brodie Theatre

1118 Light St.

Baltimore, Md.

-
- 4 By Mr. KINGSLEY :

Q. I show you a letter dated Muskogee, Oklahoma, November 27th, 1909, and signed "Yale Amusement Company of Oklahoma," accompanied by a letter dated Little Rock, Arkansas, November 20th, 1909, signed Mitchell Film Exchange, and accompanied by affidavits signed by R. B. Smith and Arthur Cooley, under date of November 27th, 1909, and I ask you if this letter and the accompanying letter and affidavits were received by you? A. Yes.

Mr. KINGSLEY: I offer them in evidence.

1

Mr. GROSVENOR: Same objection.

The papers offered are received in evidence and marked "Defendants' Exhibit No. 82," and are as follows:

Defendants' Exhibit No. 82.

Muskogee Okla.,

Nov 27 '09

The Monarch Film Exchange,
Oklahoma Cy. Okla.

2

Gentlemen:—The enclosed letter addressed to one of our Competitors at McAlester Okla. Explains its-self. You can see by this letter, that the Mitchell Film Exchange is right on our trail, they are doing all they can to down us and aid our competitor. Now that we have given our business to your exchange.

We have given Mitchell thousands of dollars worth of business in the last two years. It is true we had to quit him twice and Mitchell made the boast that if we ever quit him again, he would give us competition, that would put us out of business. To show you how earnestly he is going about this he has sent his best man. Mr. Joe Wakelin, to camp right on our trail Mr. Wakelin was here on the night Nov 24th when the Wigwam Theatre started Mitchell service. We were running "The Light That Came" a Biograph. They put this picture on to tie us and run it with "Young Deers Bravery" an Independent Picture. I am enclosing 2 affidavits to substantiate this statement. Now on Nov 25th they run Selig's "Custer's Last Stand" at Suppertime to try it several persons were there and saw it and as you know Mitchell could not possibly get this picture here with our train service unless he shipped it the night before. This is nothing new for Mitchell, when he is fighting a Competitor, as I recall one instance, where we had a picture we could not place readily and upon looking it up, I found we were running a reel the day it was released or the day before it was released I do not know which. In either event it was shipped out of the Exchange, contrary to the Patents Co.'s rules.

3

4

If you say so I will look this up and give you the

1 name of the reel. Now, as you know, we stayed with Mitchell as long as we could, we were supposed to get stuff not older than 30 days, but we often got stuff from one to two years old, so I think when we quit Mr. Mitchell, he had no kick coming whatever, and what I want your Exchange to do is to protect us against this Competition.

I understand that he has promised our Competitors First run stuff at \$8.00 a reel just to spite us, as you know Mitchell's Exchange cannot put first run in here untill ten o'clock P. M. on release day and you can easily beat that having the advantage of being closer to us. I am
2 giving you this information in the hopes that you will give us the protection we are entitled to and see that Mitchell plays fair.

Yours Truly,

YALE AMUSEMENT COMPANY OF OKLA.,
Per L. W. Brophy, Pres.

Letter Head.

MITCHELL'S FILM EXCHANGE.

3 Little Rock, Ark.,
Nov. 20th, 1909.

Mr. John Buchanan,
Mgr. Evelyn Theatre,
McAlister, Okla.

Dear Sir:—

Mr. Brophy has decided to discontinue our service, and we have decided to see that all of his Competitors that stay with us, get better film service than he does from his new Exchange. We are going to shoot the "Custers
4 Last Stand" picture right to you, and will wire you where to ship it to after you have run it two days. We are not only going to ship the Custer picture to you, but are going to pick good features for you hereafter. You will see Mr. Brophy sit up and take notice when we turn loose our "Gatling Gun" on him. We, of course, are not mad at Mr. Brophy; if he thinks he can better his service any, it is alright with us, but we are going to see that the houses that remain with us, have better service than he gets. We think that he quit for the reason that we would not prom-

ise him the Custer picture before our other customers in the same towns, and for this reason we think we deserve the support of the houses who are opposing him, especially when it would be to their own interest to use our service. 1

Please wire us the names of the films Brophy puts on there, so that we can make him show repeaters and you will not have to show them. Do this at the earliest possible moment on his change days. It may be that your films will be so new that we will have to have you ship them to some of our fast houses, at night after your show; if so will you accommodate us by doing so. 2

We are going to hand you the "Goods", and will say that if you think it is worth more than \$42.00 per week, and are in a position to pay more, we would appreciate a little raise, but this is not compulsory as we propose to stand by our customers at all times.

Respectfully,
MITCHELL FILM EXCHANGE,
J. M.

State of Oklahoma, }
Muskogee County, } ss.: 3

Affidavits of R. B. Smith and Arthur Cooley, of lawful age, being first duly sworn, depose and say as follows: We were on the evening of November the twenty-fourth in the Wigwam motion picture theatre, situated on Court St. in the city of Muskogee, Oklahoma, and operated by the Muskogee Amusement Co. That on the aforesaid evening we saw shown at the said theatre pictures entitled "Young Deers Bravery" and "The Light That Came".

R. B. SMITH,
ARTHUR COOLEY. 4

Subscribed and sworn to before me this
27th day of November, 1909.
[SEAL.]

My commission expires Jan. 9th, 1913.

By Mr. KINGSLEY:

Q. I show you a letter dated Santa Maria, California,

- 1 December 21st, 1909, and signed Wilcox & Wilcox, and ask you if you received that letter? A. Yes.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 83," and is as follows:

Defendants' Exhibit No. 83.

2

Letterhead of

NOVELTY THEATRE

Refined Motion Pictures

Santa Maria, California, Dec. 21, 1909

Motion Picture

Patents Co.

New York

- 3 In Reply to your question as to our Service Being Satisfactory Will Say We Have Had a great deal of trouble getting What We Pay for I took Service With one Company and We Signed up a Contract to Pay \$36.00 Per Week (License included) for Films Not over 4 Weeks Released, and When the Service began they Furnished Stuff that Was any Old age Some as much as 3 Months Old.

- 4 So after Writing them and trying to get them to Come up to Contract and getting no Reply We quit them and the exchange We are dealing With now agreed to furnish 6 Weeks Release they generally Furnish 8 Weeks Release We Wrote them in Regard to the Matter and their Reply Was What Difference is it to you How old they are So that they Havent allreddy Ben Shown in your town.

We told them that it Made quite a Difference to us as there is another Show Runing Here and We Want to keep in the Lead.

if We Cant Keep in the Lead We Will Have to try the Independent Exchange So as to get different Service

Alls We Have asked them to Send us the Regular Release of Biograph and Sileg Films, and to not Send very many Patha feirs.

Well We are getting 3 Patha 1 Selig and 1 Biagraph each Week and the Rest is made up of very good Reels. 1

So I think the Service is far from good in this Part of the Country

Hoping you Can give us the name of Some Exchange in this State that Will Live up to their agreements and try to Give us What We Want and Pay for.

We Remain Yours

WILCOX & WILCOX.

By Mr. KINGSLEY:

2

Q. I show you a letter dated Toledo, Ohio, August 15th, 1910, signed by the Kent Film Service Company, accompanied by a letter dated Octavia, Ohio, August 15th, 1910, signed by George E. Schuster. Did you receive these letters?
A. I did.

Mr. KINGSLEY: I offer them in evidence.

Mr. GROSVENOR: Same objection.

The papers offered are received in evidence and marked "Defendants' Exhibit No. 84," and are as follows: 3

Defendants' Exhibit No. 84.

Letterhead of

THE KENT FILM SERVICE CO.

Toledo, Ohio, August Fifteenth, 1910.

The M. P. Patents Company,
80 Fifth Ave.,
New York City.

4

Gentlemen:—

We are enclosing herewith a letter received from George E. Schuster, Mgr. of the Victory Theatre, Ottawa, Ohio. reference to the Ohio Film Exchange driving Theatres to the Independent ranks.

Yours very truly,

THE KENT FILM SERVICE COMPANY.

1

VICTORY THEATRE.

Ottawa, O. August 15th, '10.

The Kent Film Co.,
Nicholas Bldg.
Toledo, O.

Gentlemen:

Will you please quote me your price for service, twelve
reels in six shipments?

2

I have been thinking of making a change for some time
and if I came to you would want you to protect me against
the Ohio Film Exchange who have threatened to put me out
of business or make me go Independent if I left them,

Let me hear from you at once.

Yours very truly,

GEO. E. SCHUSTER
Mgr. VICTORY THEATRE

By Mr. KINGSLEY:

3

Q. I show you a letter dated Athens, Georgia, September
4th, 1909, signed A. W. Rhorer. Did you receive that letter?
A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and
marked "Defendants' Exhibit No. 85," and is as fol-
lows:

Defendants' Exhibit No. 85.

4

Letterhead of
THE LYRIC

Athens, Ga. Sept. 4th, 1909.

Motion Picture Patent Co.,
New York, N. Y.

Gentlemen:—

I understand that you are the distributor of all licensed
films, and I therefore take the liberty to lay before you my

case. Being a novice at the motion picture game it is rather difficult to understand the intricacies attending the distribution of this service by the different exchanges throughout the country. I did not anticipate having any trouble securing a desirable service when I entered the business, but experience has proved my mistake. I came to Athens expecting to install a plant and engage in a legitimate business, deal with honest and reliable men in this line of work, and carry out the plans I had formed. I built a small theatre, costing \$5500.00, and it is the most up to date playhouse of its kind in the State, though rather small. Before completing my house I corresponded with a film exchange in Birmingham, whom I understood handled only licensed films, and observation had taught me that no other films were the equal of these, therefore I contracted with this concern to furnish me 2nd run stuff at a given price. Instead of carrying out their end of the contract, I have received only 4 pictures to date that permitted exhibition, and they were not the run promised. I have endeavored in every way to adjust the matter, so as to get the service my competitors are receiving at a lower figure, but in some way they have prevented me from receiving same. I understand perfectly that so many films are released per week, and the exchanges buy so many of these, and of course if they attempt to furnish more theatres than they buy films for, some of their customers suffer in consequence thereof. They promise everything and deliver nothing. I stand ready and willing to pay for the service I contract for, and what I wish to know is they any way that I can run licensed films without having to depend on so unreliable men as seem to have control of the film business in the South. There is absolutely no recourse open to me except buy independent stuff, and I candidly believe these films are inferior to the licensed ones.

I would appreciate an explanatory letter concerning the details I have inquired about, also the names of any other licensed dealers in a near enough town as to permit me receiving films that at least gives me an opportunity to compete with the other shows in town.

Thanking you for the information, and trusting to receive an immediate reply, beg to remain,

Yours truly,

A. W. RHORER.

1 By Mr KINGSLEY:

Q. I show you a copy of a letter dated September 9th, 1909, addressed to Mr. Rhorer. Is that a copy of a letter which you sent in reply to Mr. Rhorer? A. Yes.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 86," and is as follows:

2

Defendants' Exhibit No. 86.

September 9, 1909.

Mr. A. W. Rhorer,
Lyric Theatre,
Athens, Ga.

Dear Sir:

3 We note the difficulty you are having in obtaining satisfactory service. If you will be kind enough to send us a copy of the contract under which your service is now supplied and will give us a list of the films furnished you during the last two weeks, we will be pleased to investigate this matter a little further. In the meantime we are inclosing a list of our licensed exchanges, from any one of which you are at liberty to obtain service.

Yours very truly,

MOTION PICTURE PATENTS COMPANY,

By

HNM/JK
enclosure

4

By Mr. KINGSLEY:

Q. I show you a letter dated Athens, Georgia, September 14th, 1909, signed A. W. Rhorer. Did you receive that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 87," and is as follows:

Defendants' Exhibit No. 87.

1

THE LYRIC

College Ave.

A. W. Rhorer, Manager

Athens, Ga., Sept. 14th, 1909.

Motion Picture Patents Co.,

New York City.

Gentlemen:—

Replying to your favor of 9th inst., impossible to send you contract I entered into with film company, as all communications were by phone excepting a few letters relative to prices etc. The Birmingham Film Supply Co. agreed to furnish me with 3rd day run for \$50.00 per week, commencing August 23rd. As stated to you before I was a new man in the business, and did not fully understand the in and outs of the game. The old adage has proved correct, however, in this instance and I am fully acquainted with the film situation in the South. Instead of furnishing me 3rd run stuff, I got four 3rd run films during two weeks service, and one of these was being run at the other theatre here the same day. The rest of the time I pieced in with independent stuff. The consequence was did not establish my reputation as hoped for, and did not keep up the standard that my theatre called for. I had put up one of the finest little theatres in the South, costing approximately \$7000.00, and was very desirous of showing up fine at the opening. After this two weeks experience, I made a phone contract with The Theatre Film & Supply Co. of Birmingham to furnish me with 3rd run stuff at \$60.00 per week. On Monday of last week, they failed to deliver the goods on account of error in shipment. Again I sought refuge with the independents and supplied the day. The next three days I got what was contracted for, but on the 4th day I got a film that had been shown at one of the theatres here the day before. I investigated and found they were getting 2nd run stuff, one theatre from the same exchange I had begged to give me a price on 2nd run. Again I called on independents. The next day was the same, and I wrote them to discontinue service. This last exchange did deliver

2

3

4

- 1 what they contracted to do, only in the original agreement they assured me that under no circumstances would either of the other two secure 2nd run service. On this assurance I gave them my service. At the suggestion of one of the exchanges I endeavored to form an alliance with the other two theatres and get service that would be satisfactory to all, patrons as well as ourselves, at a reasonable price. My efforts were in vain, as they well knew I would at last have to give up trying to secure the service I contracted to get. What kind of a pull either of them have, I am unable to state. Of course I was powerless to better myself with the association, as Birmingham was the only town that could furnish me with anything at all new.
- 2

- What I wish to lay before you is this. I tried in every way possible to obtain the associated service at any price but was compelled to give up on account of the relations existing between the exchanges in Birmingham and the managers of the other two theatres here. I knew and know now that these films are far superior to any others made, but of course now that I am in the field have to put up with the best I can get, so am using independent stuff until I can get relief from some other source. Possibly you can suggest some way out of the difficulty.
- 3

Yours truly,

A. W. RHORER.

Associated Reels used during three weeks.

- Way of the Cross Vita 8/21
 King's Messenger King's Protege? Eclipse 8/21
 Obeying Her Mother
 A tale of the West Essanay 4/7
 The Ring Leader Pathe 3/17
 4 Eternal Romance
 Enchanted Guitar
 Pranks Bio 8/30
 The Mills of the Gods 8/30
 Edward saving his enemy's sister.
 Ponce de Leon
 To Stout
 The Sound Sleeper Bio 4/12
 The blight of sin Selig 9/2
 The Galley Slave Vita 9/4

These are some of them. I have no record of others. You will note that some of these were not associated films, but all are from the two exchanges in Birmingham.

By Mr. KINGSLEY :

Q. I show you a letter dated St. Louis, Missouri, Dec. 15th, 1909, addressed to A. B. Flintom, Yale Film Exchange, Kansas City, Missouri, signed by J. Warner, December 15th, 1909. Did you receive that letter? A. I did.

Q. From whom did you receive it and under what circumstances? A. This letter was forwarded to us by Mr. Flintom of the Yale Film Exchange, located in Kansas City, Missouri.

Q. Was he a licensee of the Patents Company? A. He was.

Mr. KINGSLEY : I offer that in evidence.

Mr. GROSVENOR : Same objection.

The papers offered are received in evidence and marked "Defendants' Exhibit No. 88," and are as follows :

Defendants' Exhibit No. 88.

INDEPENDENCE AMUSEMENT COMPANY

(Incorporated)

Main Office :

Kingshighway and Delmar Blv.

St. Louis, Mo., Dec. 15th, 09.

Mr. A. D. Flintom,
c/o Yale Film Exchange,
Kansas City, Mo.

Dear Sir.

Enclosed find affidavit as requested by you. Also wish to further state that we had an interview with O. T. Crawford & he positively states that you will be compelled to cancel our service. Now we are on the eve of a probably long & bitter fight as Crawford has done us a contemptible

the Lafayette Theatre uses three reels of what is commonly known as commercial film, per week, previously used by other theatres in St. Louis using the Yale service. 1

Affiant further states that the Yale Film Exchange Company did not, either directly or through any of its representatives personally solicit this business, but that the matter of the using of Yale service was first broached to affiant by Mr. Rinsche, proprietor of the Savoy Theatre. Affiant's company was dissatisfied with the service then being obtained from the licensed exchange in St. Louis it was then dealing with, and after careful consideration decided to rent films from the Yale Company. The matter was taken up through Mr. Rinsche, who had already opened negotiations with the Yale Film Exchange Company, for service for the three houses named above and the arrangements were effected. The Independence Amusement Company was then being served by the O. T. Crawford Film Exchange Company. It became dissatisfied with the service because the said O. T. Crawford Film Exchange could not, or would not, give the service desired, after promising that they would. 2

The Washington Theatre is one of the finest moving picture theatres in the city of St. Louis, and of the entire country and caters to the best class of people, the theatre being located in a first class residence section of the city; that the investment in said theatre represents about Forty Thousand Dollars and the trade demands high grade entertainment, film of late date and in perfect condition. This service they were unable to obtain from either of the licensed exchanges in the City of St. Louis. It was not a question of price, but it was the question of the character of service they could obtain. It has been the effort of affiant's company to produce the very highest class of moving picture show entertainment and in neither of its theatres are there any vaudeville acts, but the entertainment is limited exclusively to moving pictures and high class music, their purpose being to cultivate their patrons and to develop a high and popular order of entertainment along the lines mentioned. 3 4

Affiant further states that the service furnished by the Yale Film Exchange Company has been satisfactory to the management of the theatres and to its patrons. No reduction in price has been made for the service and the item of price

1 did not control or influence affiant's company in placing the business with the Yale Film Exchange Company.

Affiant further says that Mr. Kellar, one of the officers or managers of the O. T. Crawford Film Exchange Company notified affiant about the time the arrangement was made with the Yale Film Exchange Company that he had heard of the proposed change and threatened that if the same was made that his exchange would put in their service in a competitive theatre at such price as would put affiant's company out of business or compel it to return to the Crawford Company and use its service. This threat was made emphatic by Mr. Kellar and since that time efforts have been made to make said threat effective. For example, for the purpose of harassing and injuring the business of the Washington Theatre, Mr. Kellar of the Crawford Exchange in carrying out and endeavoring to make good his threat to injure the Washington Theatre and to cause them to discontinue the use of the Yale service, has been and is at present furnishing a theatre known as the Vaudett located on the same side of the street as the Washington in the same block, not more than one hundred and fifty feet east of said Washington Theatre, with twenty-one reels of licensed film per week, the majority of which are first run films, at a time earlier than it is possible for the Washington Theatre to obtain any film from its source of supply, the Yale Film Exchange Company being unable to ship any film until after eight o'clock in the morning of the day of release, which restrictions make it impossible for the film to reach the Washington Theatre until after six o'clock at night.

JACOB WARNER.

4 Subscribed and sworn to before me this 15th day of December, A. D., 1909. My commission expires Feby. 7th, 1912.

[SEAL.]

J. Wm. Taylor,
Notary Public within and for the City
and County of St. Louis, Missouri.

By Mr. KINGSLEY:

Q. I show you a letter dated Baltimore, Maryland, June

17th, 1910, signed C. Baumback. Did you receive that letter? A. I did. 1

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 89," and is as follows:

Defendants' Exhibit No. 89.

Baltimore, Md., 2

June 17, 1910.

Motion Picture Patent Company:

My theatre has never been Closed since I started. Mr. Moore did not treat me right he would give me bad pictures that break down every five minutes he would give me picture that I run the week before and some Picture he would give me that was run in one block from us Mr. Ragon when we go after Picture we would tell about it they did not seem to care when my manger would say I had them Picture he said there isn't any others so you would had to take them or none at all you Know People won't come in your Place if they saw a picture before I was loosing trade so I had to change I when back to Mr. Miles he is a nice man to deal with I was sorry to hear that he had some trouble that time with the Licensed Pictures. 3

I alway Paid in advance for my Picture.

I took Picture from Mr. Moore May 2, May 9, May 16, May 23.

My Place was not Closed May 30, but I had to take other Picture or I would had to Closed my Place. I could not run Mr. Moore Picture any Longer. 4

C. BAUMBACH.

Patterson Theatre,
Eastern—East Ave.,
Baltimore, Md.

Excuse bad writing and Mistakes.

1 By Mr. KINGSLEY:

Q. I show you a letter dated Baltimore, August 30th, 1910, signed Charles W. Demme. Did you receive that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 90," and is as follows:

2

Defendants' Exhibit No. 90.

Balto., Aug. 3/10.

Motion Pic. Pats. Co.

Gentlemen:

Dear Sirs:

3

In reply to yours of Aug. 1st will state that we were compelled to take the Independent service on account of the bad service that we got from Messrs. Pearce & Scheck, not only us but the Red Mill across the street from our Crescent dropped out at the same time and there others will do the same thing shortly I myself am half owner and mang. of our two houses and must state that we would rather have assoc. pictures but when we went to see Pearce & Scheck about reducing our service for the summer as business was so bad he told us that we would have to run repeaters the Red Mill and us so we came to the conclusion rather than do that we would either close up or try the Independents for a short while which we are doing at present any other information that you may desire will be gladly given.

4

Yours Very Truly,

CHARLES W. DEMME.

By Mr. KINGSLEY:

Q. I show you a letter dated Baltimore, March 28th, 1911, signed George C. Willis, and ask if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

1

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 91," and is as follows:

Defendants' Exhibit No. 91.

Letterhead of

RED MILL THEATRE,

Lafayette Ave.

2

Baltimore, March 28th, 1911.

Mr. Marvin,

c/o Moving Picture Patent Co.

Dear Sir:

Since our last writing several more points have arisen that we would like to lay before you, so that you can take them into consideration before making your decision in the case.

As you are aware the new house has been open for two weeks and during that time we have been compelled to take pictures very much inferior to any we have ever used in our house in our two years of business in the Moving Picture Business. At least six days of this time we have been offered pictures that have been run at the other house and the only choice we have had in the matter was either "take these or run Commercial Reels". This we have been doing, in other words instead of running 6 & 12 day old pictures as per our agreement with the Exchange, we have been running for example Tuesday, March 21st. Eleven days & Seventy-two day old pictures, which you can readily see is quite a contrast to what we have been accustomed to running in our house. Thursday, March 23rd, and yesterday, March 27th, we both had on the same pictures, thereby losing quite a large number of our customers.

3

4

On Saturday, March 25th, our representative went to the Exchange and they again offered us pictures that had been run by the New House. When our man protested he was informed by one of the men in charge of the Film

1 Department (Mr. Chas. Pearce) that "the new house
has been beating us out on pictures right along and would
keep on doing so, and that it was only a question of a short
time when they would beat us out altogether. Now we
have a witness to this statement and he is a responsible
party. We do not care to bring him into this matter, un-
less it is absolutely necessary as he is interested in the
Picture Business himself. However, he informs us that if
we need him we can call on him & he will back us up
as he said at the time it was one of the broadest state-
ments he had ever heard. We feel that we have made it
2 very plain to you that the Film Exchange is working
against us instead of with us & we think when you have
taken all this into consideration that you will readily agree
with us that we have been very lenient in this matter &
that we have very good grounds for all the trouble to
which we are putting you to.

We wish to state that since the opening of the new
house our business has fallen off considerable as we ex-
pected for the first couple of weeks, but as we have said
before ours is strictly a residential section and when busi-
ness settles down in its regular routine both houses are
3 going to get a certain portion of the business and neither
one enough to make any money. This goes to show that
the neighborhood will not support two houses using the
same pictures. As we have been using Association Pic-
tures for practically two years & the New House has just
started we feel it your duty to protect us if in no other
way by cancelling the License of the New House (The La-
fayette).

Things are at a very serious point & we certainly hope
you will consider this matter & give us an immediate an-
4 swer.

We beg to remain,

Respectfully Yours,

RED MILL MOVING PICTURE PARLOR,

Geo. C. Willis.

By Mr. KINGSLEY:

Q. I show you a letter dated January 17th, 1910, ad-
dressed to Mr. Mandelbaum, Lake Shore Film Exchange,

signed by E. W. Sprosty, and accompanied by an affidavit by E. W. Sprosty. Did you receive that letter and the affidavit? A. I did. 1

Q. Under what circumstances did you receive it? A. That letter was forwarded to us by Mr. Mandelbaum of the Lake Shore Film Exchange of Cleveland, a licensee of the company.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The papers offered are received in evidence and marked "Defendants' Exhibit No. 92," and are as follows: 2

Defendants' Exhibit No. 92.

City—

Jan. 17, 1910.

Mr. Mandelbaum,

Lake Shore Film Exchange.

Dear Sir:—

A few days ago Mr. Christenson of the United Film Co. called me up and asked if I could come down to his office as he had some important business to take up with me. 3

When I arrived there Mr. Christenson and Mr. Kohl were both in the office. Mr. Christenson said he understood that I was going to open up a new Theatre on Broadway and wanted to know why I applied for License through your company. I told him that I felt that you would deal with me more honest than what they would on account of their owning the Broadway and Dixie Theatres. I also told them that your firm did not have any Theatres on same street consequently I would be treated better. They could not see it that way and Mr. Kohl said I'll tell you one thing and that is if you do not take service from us we will see that you do not get a License, we also will run stuff right out of the can, and furthermore I will erect a new Theatre at the corner of Broadway and E. 55th and make it large enough to put you out of business, and I will see that it will be completed by the 1st of June. Now he said it is up to you, you can either take service from 4

1 us or have the other to contend with. My object in writing this letter to you is to let you know how the United Film Co. is threatening me in order to get my patronage.

Hoping to hear from you on this same matter soon.

I remain Yours very truly—

E. W. SPROSTY.

AFFIDAVIT.

State of Ohio,)
County of Cuyahoga,) ss.:

2 E. W. Sprosty being duly sworn says that on the 17th day of January, 1910, he wrote, or caused to be written to Mr. Mandelbaum of the Lake Shore Film & Supply Co. of Cleveland, Ohio, a certain letter that is hereto attached, marked "Exhibit—A," and the contents of said letter is true.

E. W. SPROSTY.

Sworn to by the said E. W. Sprosty and by him subscribed to before me and in my presence this 31st day of January, 1910.

3 FRANK E. WINTER,
(Notarial Seal.) Notary Public.

By Mr. KINGSLEY:

Q. Did you receive, at any time, a request from the Department of the Interior, United States Indian Service, or from any representative of that department, for permission to use a motion picture camera? A. I did.

Q. Was there some correspondence with the Department of the Interior, or this representative, regarding this request? A. There was.

Mr. GROSVENOR: I want to object to all this line of examination on the same grounds as previously stated.

By Mr. KINGSLEY:

Q. Was the license granted? A. It was.

Q. I show you a letter dated July 2nd, 1910, signed Ferdinand Shoemaker. Did you receive that letter? A. I received this letter.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 93," and is as follows:

Defendants' Exhibit No. 93.

DEPARTMENT OF THE INTERIOR,

United States Indian Service,

Crow Agency, Mont.,

July 2nd, 1910.

The Motion Picture Patents Co.,
New York, N. Y.

Gentlemen:

I have been detailed by the Office of Indian Affairs to carry on an educational campaign against tuberculosis and other infectious diseases among the Indians and employees of the Indian Service, and in connection with the work am desirous of making use of the stereopticon views and motion pictures.

I, therefore, request permission to use the motion picture camera which the Department is about to purchase in your city, the object being for educational purposes only.

Yours very truly,

FERDINAND SHOEMAKER,

Physician Expert & S. D. A.

By Mr. KINGSLEY:

Q. I show you a letter under the letterhead of the Department of the Interior, Office of Indian Affairs at Washington, signed C. F. Hanke, Acting Commissioner. Did you receive that letter? A. Yes.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 94," and is as follows:

Defendants' Exhibit No. 94.

1

Letterhead of
DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs,
Washington.

Jul 15 1910

Moving Pictures Patents Company,
80 Fifth Avenue,
New York, N. Y.

2

Gentlemen:

The Office is having prepared a series of lectures, illustrated by stereopticon views and moving pictures, on the general subjects of trachoma and tuberculosis. These are for instructing Indians and employes in the Indian Service in the prevention and treatment of these diseases. I wish to make use of the moving picture machine which I understand you operate under a patent, and I request your permission to use it in the work of preventing the spread of disease among Indians.

3

Very respectfully,

C. F. HANKE,
Acting Commissioner.

7-OGP-14
11435

By Mr. KINGSLEY:

Q. Was this request answered? A. It was.

Q. Was the license granted pursuant to it? A. It was.

4

Q. And was the license accepted? A. It was.

Q. I show you a copy of a letter dated July 23rd, 1910, addressed to Mr. Ferdinand Shoemaker, signed Motion Picture Patents Company, by George F. Scull, Secretary, and bearing at the bottom, the endorsement, "The following license is accepted, Joseph A. Murphy, Medical Supervisor, United States Indian Service, date August 1st, 1910." Is that a copy of a letter, which was sent in reply to the request of the Department of the Interior for license, and is the notation at the bottom a copy of the acceptance of the

license? A. It is a copy of the letter and a copy of the acceptance. 1

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 95," and is as follows:

Defendants' Exhibit No. 95.

(Copy.)

July 23rd, 1910. 2

Mr. Ferdinand Shoemaker,
Physician Expert and S. D. A.,
Department of Interior,
United States Indian Service,
Crow Agency, Montana.

Dear Sir:—

Pursuant to the request of your Department as per your letter of the 2nd inst., for permission to use a motion picture camera "to carry on an educational campaign against tuberculosis and other infectious diseases among the Indians and employes of the Indian Service," this Company hereby grants such a license under the United States Patents owned by it, provided such pictures so taken shall not be sold or otherwise disposed of, or be used for giving public exhibitions thereof for pay, without special permission from this Company. And it is also understood that this license may be terminated by this Company at any time. 3

If this proposed license is accepted under the foregoing terms, please have such acceptance noted by the proper officer on the enclosed copy, which is to be returned to this Company. 4

Yours very truly,
MOTION PICTURE PATENTS COMPANY,
By George F. Scull,
Secretary.

Wm.P/JK.

The foregoing license is accepted.

(Signature) JOSEPH A. MURPHY,
Medical Supervisor, Indian Service.

Date, August 1, 1910.

1 By Mr. KINGSLEY:

Q. Did you, at any time, license the Navy Department or any of its representatives, to use, on behalf of the Navy Department, apparatus, upon which the Motion Picture Patents Company had patents? A. We did.

Q. Was the license granted to the Assistant Secretary of the Navy or any official of the Navy? A. I believe it was granted to the Assistant Secretary of the Navy.

2 Mr. GROSVENOR: I want to object to this line of questioning as trivial, and going into the most remote and immaterial matters, it never having been contended either in the Standard Oil or Tobacco cases that either the Standard Oil Company or the American Tobacco Company, had obtained immunity from the Anti-Trust Law, for the reason that either of those companies had had business relations with the United States, one of them having sold oil and the other tobacco.

3 Mr. KINGSLEY: I wish to call attention on the record to the fact that the objection is not a legal objection, but a mere statement of a conclusion of the counsel relative to what he believes happened in another case, or did not happen.

By Mr. KINGSLEY:

Q. I show you a letter dated April 30th, 1909, addressed to Lieutenant Commander G. H. Holden, Navy Yard, Brooklyn, New York, signed, "George F. Scull, Secretary." Was that letter sent from the Motion Picture Patents Company? A. It was.

4 Q. I call your attention to a notation at the bottom of the page, to this effect: "The foregoing license is accepted, Beekman Winthrop, Assistant Secretary of the Navy." Was that placed thereon after the letter was sent? A. It was.

Q. And subsequently returned to the Motion Picture Patents Company? A. Yes.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and

marked "Defendants' Exhibit No. 96," and is as follows:

Defendants' Exhibit No. 96.

MOTION PICTURE PATENTS COMPANY.

80 Fifth Avenue.

New York City.

April 30, 1909.

Lieut. Com. G. H. Holden,
Aid & Flag Secretary,
Navy Yard, Brooklyn, N. Y.

Dear Sir:—

Pursuant to the request of the Navy received through you, for a license to use apparatus for the taking of moving pictures and projecting the same, this Company hereby grants such a license under the U. S. patents owned by it, provided such pictures so taken shall not be sold or otherwise disposed of by the Navy, or be used for giving public exhibitions thereof.

If this proposed license is accepted under the foregoing terms, please have such acceptance noted by the proper officer on the enclosed copy, which is to be returned to me.

Yours very truly,
GEORGE F. SCULL,
Secretary.

The foregoing license is accepted.

BEEKMAN WINTHROP,
Assistant Secretary of the Navy.

Date, May 13, 1909.

Whereupon, at 4:15 P. M., on this 16th day of October, 1913, the hearing is adjourned until 10:30 A. M., on Friday, October 17th, 1913, at the same place.

1

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,
Petitioner,

v.

MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, October 17th, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M., October 17th, 1913, at Hotel Manhattan, New York City.

3

Present on behalf of the Petitioner, Hon, EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon H. N. MARVIN resumed the stand.

1

Direct examination continued by Mr. KINGSLEY:

Q. Mr. Marvin, did you, in 1909 and 1910, have knowledge of the cancellations of the licenses of various rental exchanges which were made by the Motion Picture Patents Company? A. I did.

Q. Did you have knowledge of the general record of the various rental exchanges throughout the United States which had been licensed by the Motion Picture Patents Company? A. I did.

Q. And you knew of the changes which occurred in them with reference to consolidation, organization and changes of names? A. Yes.

2

Q. And from time to time did you know of complaints which were made against exchanges, respecting their business methods, and respecting the distribution of motion pictures, which had been shipped to them by the licensed producers? A. I did.

Q. Was there a licensed rental exchange known as the Alamo Film Exchange, having offices at Dallas, Texas, and at San Antonio, Texas? A. There was.

Q. What became of that exchange? I will state here, Mr. Marvin, that if you have any notes which will refresh your memory, you are at liberty to consult them,

3

MR. GROSVENOR: He ought to show first the grounds of his information or the source of his information.

MR. KINGSLEY: He could take a newspaper, or anything that will refresh his memory, he may use anything.

4

The Witness: After the licenses were granted to the two branches of the Alamo Film Exchange, one at Dallas, and one at San Antonio, application was made by the San Antonio branch to remove to Dallas, combining with a party named Wheelan, who was interested in the film business, but the combination with Wheelan was not effected, and the San Antonio branch of this exchange was finally moved to Dallas, Texas. Later on, Wheelan got control of this exchange, and it was moved to Houston, Texas, and was there-

- 1 after operated under the name of the J. D. Wheelan Exchange. This Wheelan Exchange was, therefore, the successor of the two branches of the Alamo, formerly located at San Antonio, and Dallas, Texas.

By MR. KINGSLEY:

Q. At the time of this consolidation was J. D. Wheelan operating a licensed exchange? A. He was.

Q. So that these changes which you have described were in effect a consolidation with the J. D. Wheelan exchange?

- 2 A. That was the effect.

Q. When was this accomplished, if you know? A. Well, according to the best of my recollection, this was accomplished early in 1909, I can't give the date of it.

Q. Was there a rental exchange known as the American Film Exchange, located at Pittsburgh, Pa. A. There was.

Q. Was the license of that exchange cancelled by the Motion Picture Patents Company? A. It was cancelled on the 19th of April 1909.

Q. What led up to the cancellation; what was the cause of that cancellation? A. It was reported to us—

3

MR. GROSVENOR: I object to what was reported to him as hearsay.

The Witness (continuing):—that licensed motion pictures were being exhibited in unlicensed theatres at Pittsburgh, and we sent a man to Pittsburgh, to investigate, and he found that licensed motion pictures were being supplied by this exchange to unlicensed theatres. After getting this report we notified the proprietors of this exchange to appear in New York, and show cause why their license should not be cancelled. Representatives of this exchange did appear, and after discussing the matter with them the Patents Company determined not to cancel the license of this exchange at that time, provided they paid a penalty of \$250.00, which it was understood with the representatives would be paid. However, the penalty was not paid, and getting no further satisfaction from the exchange, the license was ultimately cancelled.

4

Q. Was there a licensed rental exchange known as the American Film Service, located at Memphis, Tenn., which

had been licensed by the Motion Picture Patents Company? 1

A. There was.

Q. Was the license of the American Film Service Exchange cancelled by the Motion Picture Patents Company?

A. It was.

Q. When? A. The license was cancelled on May 15th, 1909.

MR. GROSVENOR: What is this paper that you are using for refreshing your recollection, Mr. Marvin?

The Witness: This is a memorandum which I have prepared to refresh my memory with reference to the details of the cancellations, organizations and consolidations, of these several exchanges. 2

MR. GROSVENOR: May I see the memorandum?

The Witness: Yes sir.

MR. GROSVENOR: Please mark this paper for identification, so that I may have it later on. 3

The Memorandum referred to was marked by the Examiner "Petitioner's Exhibit No. 235, for identification."

By MR. KINGSLEY:

Q. This memorandum was prepared under your supervision and direction, Mr. Marvin? A. It was.

Q. And it is based upon records and documents in the files of the Motion Picture Patents Company? A. It is.

Q. Were you personally aware of these matters regarding which you are now refreshing your memory at the time they took place? A. I was. 4

Q. Now, you may complete your answer regarding the American Film Service Exchange, Mr. Marvin, but first I will ask you when was the license cancelled? A. The license was cancelled on the 15th day of May, 1909.

Q. What was the occasion or reason for the cancellation? A. The license was cancelled because the exchange was not

- 1 leasing the required minimum quantity of licensed motion pictures.

Q. You mean that it was not leasing licensed motion pictures to the amount of \$2,500 per month, as stipulated in the exchange license agreement? A. Yes, sir.

Q. Was this cancellation referred to in any bulletin? A. It was. It was referred to in Exchange Bulletin No. 8.

Q. Was there a licensed rental exchange known as the S. Nye Bass Film Exchange, located at New Orleans, La.?

A. There was.

- 2 Q. Was the license of the S. Nye Bass Film Exchange cancelled by the Motion Picture Patents Company? A. It was cancelled on February 8, 1910.

Q. Do you know when this exchange was licensed? A. It was licensed on the 28th of July, 1909.

- Q. What was the reason for the cancellation of the S. Nye Bass Film Exchange's license? A. The financial condition of this exchange had been bad from the outset, and it kept getting into debt more and more to the licensed producers of motion pictures; it did not make payments to these producers as called for in its license, and at the time of the cancellation of the license it was indebted to the licensed producers to the extent of about \$8,000. The exchange continued to do business after its license was cancelled, and finally, on November 22nd, 1910, its supply of motion pictures was purchased by the General Film Company.

Q. Was the license of the S. Nye Bass Film Exchange reinstated or restored before the purchase of its motion pictures by the General Film Company? A. No.

Q. Did Eugene Cline own and manage or run licensed rental exchanges at Chicago, Ill., and at Salt Lake City, Utah? A. He did.

- 4 Q. Were his licenses cancelled? A. They were.

Q. When were they cancelled, and what was the reason for the cancellations? A. They were cancelled on 20th of March, 1909, on two weeks' notice. They were leasing less than the required quantity of motion pictures, and Cline was making no pretense of observing the conditions of his license.

Q. Was there a licensed rental exchange known as the Columbia Film Exchange, located at Pittsburgh, Pa.? A. There was.

Q. Did any changes occur in that exchange, with respect to its ownership, or management? A. Yes. On Feb. 10, 1910, this exchange consolidated with the Pennsylvania Film Company, of Pittsburgh, Pa. The combined exchanges were thereafter known as the Pennsylvania-Columbia Company. 1

Q. Were there licensed rental exchanges known as the O. T. Crawford Film Exchange, located at El Paso, Texas, Louisville, Ky., New Orleans, La., and St. Louis, Mo.? A. There were.

Q. Will you tell us what changes took place in those exchanges with respect to their ownership, or management? A. Well, in the first place, while there was a license granted by the Patents Company for a branch at El Paso, its license was never accepted, or acted under. 2

Q. So that the exchange listed at El Paso, Texas, is merely a listed exchange, and never really existed? A. That is correct.

Q. As a licensed exchange run by the O. T. Crawford Company? A. Never did.

Q. The license was never taken up? A. Never was.

Q. What changes took place at the Louisville branch of the O. T. Crawford Film Exchange? A. The Louisville branch operated for a time, but Crawford alleged it was unprofitable, and during November, 1909, he voluntarily closed this office, alleging that up to that time he had lost over \$18,000, in the operation of that exchange. The supply of motion pictures from the Louisville office was shipped to the Crawford St. Louis branch, with the permission of the Patents Company. 3

Q. What changes, if any, took place in the New Orleans branch of the O. T. Crawford Film Exchange. A. Crawford also alleged that this office was unprofitable, and he asked the permission of the Patents Company to close this office, and ship the film to St. Louis, and, early in June of 1909, this permission was given, and the film was shipped to St. Louis. 4

Q. With respect to the St. Louis branch of the O. T. Crawford Film Exchange, what changes, if any, took place there? A. Complaints were made to the Patents Company about the actions of Crawford's exchange, at

- 1 St. Louis. He became quite a large owner of theatres in that vicinity, and he used the licensed motion pictures at his exchange largely for the benefit of his own theatres, or those he was interested in, to the detriment of competing theatres. His ownership in theatres became so large that during 1910, about the middle of the year, he, apparently conceiving the idea of going into the production of motion pictures—

- 2 MR. GROSVENOR: I object to all of this testimony as incompetent, immaterial, and irrelevant, and further, for the reasons stated yesterday.

The Witness (continuing):—on his own account—

MR. GROSVENOR: These objections to apply to all testimony of this character of this witness, relating to all these exchanges referred to by him in giving his testimony in which he is using this memorandum, so I won't have to repeat these objections.

- 3 The Witness (continuing):—and to this end he endeavored to form a conspiracy on the part of several other licensed exchanges, the effect of which was that these exchanges should, by concerted action, surrender their licenses, and proceed to produce and manufacture motion pictures and distribute them to exhibitors in defiance of the patents owned by the Patents Company.

MR. GROSVENOR: What is the date of this alleged conspiracy, has that been mentioned by you?

- 4 The Witness: I said that it was in the middle part of the year 1910.

By MR. KINGSLEY:

Q. Have you finished your answer? A. No. In view of this condition of affairs, the license of the St. Louis branch

of the O. T. Crawford Exchange was cancelled by the Patents Company July 19th, 1910. 1

Q. Each one of these branches at some time or another, had separate licenses, did it not? A. They did.

Q. Did one Harry Davis have licensed rental exchanges at Pittsburgh, Pa., Buffalo, N. Y., and Philadelphia, Pa.? A. He did.

Q. Were the licenses of these exchanges cancelled by the Motion Picture Patents Company? A. They were, on May 15th, 1909.

Q. Will you give us the reasons for the cancellations? A. About the time, or shortly after the time, when the licenses were granted to Davis he got into financial difficulties. He was said to be interested in the operation of theatres, and he apparently was not able to operate his exchanges at a profit, and he did not lease the required quantity of film, and the exchanges did practically no business. 2

Q. He had been a lessee for not more than three or four months? A. That is all.

Q. Was there a licensed rental exchange known as the Dixie Film Company, located at New Orleans, La.? A. There was. 3

Q. And also known as the Swanson-Dixie Company? A. Yes.

Q. What change took place in that exchange? A. That exchange voluntarily surrendered its license on the 24th of March, 1909.

Q. Was any reason given in the communication by the Dixie Film Company surrendering its license? A. No.

Q. Was there a rental exchange known as the Duquesne Amusement Supply Company, located at Norfolk, Va.? A. There was.

Q. Was the license of that exchange cancelled? A. It was cancelled on June 6, 1909, for failure to lease the required quantity of film. The supply of motion pictures in this exchange was moved to the Pittsburgh branch of the exchange, with the permission of the Patents Company. 4

Q. Was a new license offered to the Duquesne Amusement Supply Company for a rental exchange at Norfolk, Va.? A. It was, but it was declined.

Q. With reference to the Pittsburgh branch of the Du-

1 quesne Amusement Supply Company, was that also a licensed rental exchange? A. It was.

Q. Was there a rental exchange known as the Edison Display Company, having branches at Seattle, Wash., and Portland, Oregon? A. There was.

Q. Did any changes take place in those exchanges? A. Well, in September, 1909, these two branch exchanges were consolidated with two branches of the Morton Film Exchange, located in the same cities, and the consolidated exchange was thereafter known as the Amalgamated Film Exchange, having branches in Portland and Seattle.

2 Q. Did the Amalgamated Film Exchange take over the two exchanges owned by the Edison Display Company, and the two exchanges owned by the Morton Film Exchange? A. It did.

Q. So that the Amalgamated Film Exchange was really the successor of four exchanges which had been operating prior to that time? A. Yes.

Q. Did the C. J. Hite Company have a licensed rental exchange at Chicago, Ill? A. It did.

3 Q. What is the history of that exchange? A. Well, that exchange voluntarily surrendered its license on October 3rd, 1910. It announced the surrender of its license to the trade in a circular letter of that date in which it represented that it had surrendered its license because it alleged that it had obtained a better supply of motion pictures from unlicensed producers. Following this surrender of this license formal notice of the cancellation of the license was issued by the Patents Company in its bulletin of November 21, 1910.

Q. In other words, C. J. Hite Company surrendered its license October, 3rd? A. Yes.

4 Q. And sent out a circular letter to the trade to that effect? A. Yes.

Q. Did the C. J. Hite Company or the owners of the C. J. Hite Company, continue in business under another name? A. They continued in business. They were known as the "H. & H. Film Service Company."

Q. Did the H. & H. Film Service Company own the C. J. Hite Company? A. Yes.

Q. So that the circular letter of withdrawal, to which you referred as having been sent out October 3rd, 1910, was sent out by the H. & H. Film Service Company? A. Yes.

Q. I show you copy of a letter on the letterhead of the

H. & H. Film Service Company, dated Chicago, Oct. 3, 1910, signed H. & H. Film Service Company, and containing a list or catalogue of motion pictures, and ask you if this is a copy of the circular letter to which you referred? A. Yes, this is a copy of the circular letter to which I referred.

Mr. KINGSLEY: I offer this copy of the circular letter referred to in evidence.

The circular letter offered is received in evidence, and is marked "Defendants' Exhibit No. 96a."

Defendants' Exhibit No. 96a.

Letterhead of

H. & H. FILM SERVICE CO.

Chicago, Oct. 3, 1910.

Dear Sir:—

We wish to announce to you that after a great deal of thought and consideration, we have decided to ally our film exchange with the Independent cause. We value our business at present at over \$50,000.00 and if we did not think that the Independent side were stronger, had better prospects, had the sentiments of the people, which is against Trusts, and in fact that the future prospects of the business depends on the Independents, then we would have been unwilling to have risked our large capital in such a way and our decision would have been otherwise.

We resolved not to sell our exchange to the General Film Co. for a good many reasons, the main one being that we are confident that it is organized for the purpose of controlling the business in such a way that the exhibitors will be largely injured by their methods. We have always worked with the exhibitors, knowing that our interests were practically the same and we do not intend to antagonize them as the Trust does, at any time.

We have nothing to say against the Trust, although it is our opinion that the General Film Company will be a

- 1 failure in every sense of the word on account of the Independent competition.

We cordially invite the accounts of all theatres who are dissatisfied with Trust methods and service and who are now dealing with the Trust; also all Independent theatres desiring a high grade Independent service.

- 2 We have placed orders for all the best American made Independent films which together with the immense stock we have of licensed goods, which is strictly up to date and will enable us to give a service, for either class of theatres, which will be second to none. The present licensed theatres can use our service in such a way that they need run very little of the Independent films at present if they so desire, or they can use the best Independent film from our stock with a second reel always of choice licensed film, thereby getting their patrons accustomed to the great merit of the Independent releases.

- 3 We are resigning of our own free will from the Motion Picture Patents Co. and inasmuch as we have always kept the rules and regulations without any variation whatever, we are positive that they cannot truthfully cast any slurs on our record during the past. We are positive also, from our knowledge of the present situation, that the antagonistic tactics of the Trust is going to cause a large number of high grade and financially Independent exchange men, as well as theatre owners, to go to the Independent cause, and we believe never have the prospects in the history of the business, been brighter for theatres using the Independent service.

- 4 We hope to hold the great majority of our present customers and believe we will; only asking the opportunity to convince them that the Independents have the best of the business at the present and the brightest prospects for the future.

We will be pleased to hear from you and if you are open for a proposition, whether you are licensed or Independent, we can submit you a service which we are positive will enable you to increase your business very much during the coming season.

We sincerely trust you will send us your best wishes for our success on the Independent side.

Awaiting your reply with the greatest interest, we are, 1

Yours very truly,

H. & H. FILM SERVICE CO.

SSH-EI.

By Mr. KINGSLEY:

Q. I notice that you stated that the formal notice of cancellation of this license by the Patents Company is contained in bulletin of November 21, 1910? A. Yes sir. 2

Q. What was the reason that the notice of cancellation was sent out, when, as a matter of fact, the H. & H. Film Service Company had surrendered the license on behalf of the C. J. Hite Company? A. That was for the purpose of informing our exchanges, and other licensees, that this exchange, while it might have on hand a quantity of licensed motion pictures, was no longer a licensee of the Motion Picture Patents Company.

Q. Did a company or corporation, known as the Imperial Film Exchange operate licensed exchanges in New York City, Troy, New York, and Washington, D. C.? A. It did. 3

Q. Were the licenses of those exchanges cancelled? A. They were, on the 15th of April, 1910.

Q. What was the reason for the cancellation of the licenses of those exchanges? A. In March, 1910, the Patents Company discovered that one of the branches of this exchange had been surreptitiously supplying licensed motion pictures to an exhibitor in Porto Rico, for a long period of time, and had failed to notify the Patents Company of this customer, and had failed to remit any royalties for the use of a projecting machine by him. In the early part of April, 1910, the Patents Company discovered that the Imperial Film Exchange, or Mr. William Steiner, one of the principal owners, had leased premises in New York City for the purpose of engaging in business in unlicensed motion pictures, both as a producer and manufacturer, and as a renter. In view of these conditions the licenses of this exchange at all of its branches were cancelled. 4

Q. In dealing with the Imperial Film Company, who

1 was the man with whom you communicated, usually? A. William Steiner.

Q. Was he known as the principal owner of the exchange? A. He was.

Q. Was it known to you or to the Patents Company, that there was any other considerable owner at that time? A. It was not.

Q. How was the Imperial Film Exchange usually spoken of? A. It was spoken of as "Steiner's Exchange."

2 Q. Did the Kleine Optical Company have licensed rental exchanges in Birmingham, Ala.; Des Moines, Iowa; Indianapolis, Ind.; Los Angeles, Cal.; Seattle, Wash., and St. Louis, Mo.? A. It did.

Q. Will you tell us briefly what changes, if any, took place in the branch at Birmingham, Ala.? A. The name of this branch was changed to the Birmingham Film and Supply Company early in 1909, and the supply of motion pictures of this exchange was purchased by the General Film Company in September, 1910.

3 Q. What change took place in the branch at Des Moines, Iowa? A. This exchange was sold, and its name changed to the Iowa Film Service, early in 1909, and the exchange was subsequently consolidated with the Pittsburgh Calcium Light Company, of Omaha.

Q. What change took place in the branch of the Kleine Optical Company, located at Indianapolis? A. That exchange was consolidated with the exchange of the H. Lieber Company, of Indianapolis, early in 1909.

Q. Was the H. Lieber Company operating a licensed exchange at that time in Indianapolis? A. It was.

4 Q. So that the branch of the Kleine Optical Company, at Indianapolis, was merged with the licensed rental exchange operated by H. Lieber Company, of the same City? A. It was.

Q. Did any change take place in the branch of the Kleine Optical Company located at Los Angeles, Cal.? A. This branch became known as the "K. T. Film Exchange." It got into financial difficulties, and in May, 1910, a Receiver was appointed on the petition of the creditors of the exchange located in Los Angeles. The Receiver was appointed, I believe, the 6th day of June, 1910, and on July 19th, 1910, the license of this exchange was cancelled while it was in the hands of the Receiver.

At that time it owed the licensed producers of motion pictures between five and six thousand dollars. The exchange for some time had been leasing less than the required quantity of film. Many complaints had been made by exhibitors that the exchange did not fulfill its contracts with exhibitors for service.

1

Q. You say that the petition for the receivership of the K. T. Film Exchange was made by creditors. Were any of those creditors licensed manufacturers who joined in the petition? A. No.

Q. As far as you know? A. No.

2

Q. What is the history of the Seattle branch of the Kleine Optical Company? A. This branch was sold to a licensed exchange, known as the Morton Film Exchange, of Portland, Oregon, and in April, 1909, this exchange subsequently consolidated with the Edison Display Company, of Portland, and Seattle, and the combined exchanges operated thereafter under the name of the Amalgamated Film Exchange.

Q. So that the Seattle branch disappeared because of the consolidation with the Edison Display Company, which subsequently was absorbed by the Amalgamated Film Exchange? A. Well, it was consolidated originally with the Morton Film Exchange of Portland, and that exchange consolidated with the Edison Display Company of Portland.

3

Q. Was that office ever closed? A. No.

Q. With respect to the St. Louis branch of the Kleine Optical Company, what changes occurred there? A. That was sold to the Western Film Exchange, a licensed exchange of St. Louis, in April, 1909.

Q. Were there licensed rental exchanges known as Laemmle Film Service, located at Chicago, Illinois; Evansville, Indiana; Minneapolis, Minnesota; Omaha, Nebraska; Portland, Oregon; Salt Lake City, Utah, and Memphis, Tennessee? A. There were.

4

Q. Were these various exchanges licensed early in 1909? A. They were.

Q. What change occurred, if any, in regard to the Laemmle Film Service Exchange at Memphis, Tennessee? A. This office was voluntarily closed on the 6th of March, 1909, as we understand, because it was unprofitable.

Q. What changes, if any, took place in the Laemmle

1 Film Service Exchanges located at Chicago, Evansville, Minneapolis, Omaha, Portland and Salt Lake City? A. All of these offices voluntarily surrendered their license on the 12th of April, 1909.

Q. Who was the owner of the Laemmle Film Service?
A. Carl Laemmle.

Q. Were any reasons given by Carl Laemmle for the voluntary surrender of his licenses at the time he surrendered them? A. Yes. He alleged that he did not desire to comply with the conditions of the exchange license agreement, and that he believed that by going independent, that is, by dealing in unlicensed motion pictures, that he could afford his customers a better variety of motion pictures than it was possible for him to obtain from the licensed producers of motion pictures.

Q. Was a circular letter sent out by the Laemmle Film Service to exhibitors of the rental exchanges on or about October 12th, 1909? A. There was.

Q. I show you a copy of a letter under the letterhead of the Laemmle Film Service, dated Chicago, April 12th, 1909, signed "Carl Laemmle, President of the Laemmle Film Service," and ask you if that is a copy of the circular sent out about that time to exhibitors and exchanges, to which you have referred? A. This is a copy of the circular letter to which I have referred.

MR. KINGSLEY: I offer it in evidence.

MR. GROSVENOR: I object to that as absolutely and wholly immaterial.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 97," and is as follows:

Defendants' Exhibit No. 97.

1

Letterhead of

THE LAEMMLE FILM SERVICE

196-198 Lake Street

Chicago, April 12, 1909.

Mr. Geo. Hines,
Chicago, Ill.

Dear Sir:

2

I have quit the Motion Picture Patents Co. Today I wrote them a registered letter giving them notice of my withdrawal.

At the same time I made arrangements for a huge supply of new films from the International Projecting Company representing nearly thirty manufacturers not controlled by the Patents Company. Each week hereafter I will add to my already enormous stock of films and will do the greatest film renting business in the world, without a doubt.

Before making this important move, I gave the matter more careful consideration and more searching investigation than I ever gave anything in all my life.

3

I know I have done the right thing!

The Patents Company insisted that I should arbitrarily discontinue serving films to all exhibitors who had not paid the so-called license. This, of course, was a thing I wouldn't do for any man or any set of men on God's footstool. What an asinine chump I would be to dump overboard the very exhibitors who have helped me build up the most far-reaching rental business in all the world. Reason number one.

Reason number two is that I can now give you a greater variety of subjects to select from—all new—all clean—all drawing cards—all high class—not one that doesn't pass inspection by the Chicago Police Department.

4

Reason number three is that all license nonsense is wiped out. You and I can deal with each other, man to man, without outside interference and in a square, upright manner.

I want to know if you won't write me a letter or tele-

- 1 gram immediately and tell me frankly what you think of what I have done.

Sincerely yours,

THE LAEMMLE FILM SERVICE,

Carl Laemmle,
President.

L H

By Mr. KINGSLEY :

- 2 Q. Did Mr. Laemmle subsequently take out a license with the Motion Picture Patents Company either as a rental exchange or as a manufacturer? A. No.
- Q. Has he continued in business from that time? A. He has.
- Q. Is he still in business? A. He is.
- Q. What business is he in? A. He is engaged in the production and manufacture of motion pictures and in distributing his motion pictures to exhibitors.
- Q. Did you say that he is a manufacturer? A. Yes.
- 3 Q. And does he also distribute pictures? A. He does.
- Q. To exchanges? A. He does.
- Q. Owned by others or by himself? A. He does.
- Q. Were there rental exchanges located at Norfolk, Virginia, and Cincinnati, Ohio, known as the Lubin Film Service? A. There were.
- Q. What was the history of the Lubin Film Service branch at Norfolk, Virginia? A. This branch was found to be unprofitable, and it was voluntarily closed on September 19th, 1909.
- 4 Q. What became of the branch of the Lubin Film Service located at Cincinnati, Ohio? A. This exchange was sold, and subsequently operated as the Magnetic Film Service. Sold in 1909.
- Q. You state that the office of the Lubin Film Service at Norfolk, Virginia, was voluntarily closed? A. Yes.
- Q. What became of the supply of motion pictures in that exchange at the time of closing? A. It was shipped to Philadelphia.
- Q. And was there a Philadelphia branch of the Lubin Film Service in existence at that time? A. There was.

Q. Was there a rental exchange known as the Michigan Film & Supply Company, located at Detroit, Michigan? A. There was.

Q. Was the license of this exchange cancelled? A. It was. Cancelled on June 15th, 1909.

Q. What was the reason for the cancellation? A. This exchange failed to remit exhibitors' royalties for a considerable period, and failed to make any explanation or adjustment of the matter. It promised to have representatives call in the matter on the Patents Company, and failed to do so, and after having been repeatedly warned, the license was finally cancelled.

Q. Did the Michigan Film & Supply Company file reports of the customers that they were serving during the period to which you have referred, when they failed to remit exhibitors' royalties? A. No. Not only they failed to remit the royalties, but failed to send reports of customers supplied.

Q. Were there licensed rental exchanges located at New York City, Boston and Baltimore, respectively, owned by Miles Brothers? A. There were.

Q. What change took place, if any, in the rental exchange owned by Miles Brothers at Baltimore? A. The license of the Baltimore exchange was cancelled, and the supply of motion pictures at that office was moved to New York. Perhaps I should say that the exchange was instructed to move its film to New York. I am not sure whether they complied with that instruction or not.

Q. This was at the time of the cancellation at Baltimore? A. Yes, at the time of the cancellation. They did not move the film promptly.

Q. What was the occasion of the cancellation of the Baltimore branch? A. This branch supplied exhibitors with licensed motion pictures, and failed to report the names of the exhibitors to the Patents Company and to remit royalties from the exhibitors.

Q. What change occurred in the rental exchange at Boston, Massachusetts, owned by Miles Brothers? A. The Boston exchange was cancelled, together with the exchange at New York City.

Q. Have you the date of the cancellation? A. I don't recall the exact date of that cancellation.

1 Q. It was set out in the bulletins at the time? A. It was set out in the bulletin. It was during the middle part of the year 1910.

Q. I show you Exchange Bulletin No. 23, marked Petitioner's Exhibit 26, dated April 23rd, 1910, and ask you if that is the bulletin in which the cancellation of Miles Brothers of New York and Boston is reported to exchanges and exhibitors? A. That is the bulletin.

Q. Did you receive any complaints respecting Miles Brothers prior to the cancellation? A. We did.

2 Q. What was the nature of those complaints? A. Well, the complaints were that they were exchanging films between their several branches, and they were maintaining an unauthorized distributing agency in Washington. Then we received complaints from producers of licensed motion pictures that they were back in their payments. They were sending in checks which were returned unpaid. They also sent a check to the Patents Company on account of royalties, which was returned unpaid.

Q. Was there a licensed exchange operated by Miles Brothers in San Francisco, California? A. There was.

3 Q. What was the history of that exchange? A. We received some complaints that this exchange did not fulfill its contracts to exhibitors, and in May, 1910, this exchange voluntarily surrendered its license.

Q. Was there an exchange located at Watertown, New York, known as Mullin Film Service? A. No such licensed exchange ever existed as an exchange. An application by the proprietors of this exchange was made for an office in Syracuse. This application was denied, but a license for Watertown was offered and refused, so that the Mullin Film Service was never licensed by the Patents Company anywhere.

4 Q. I notice that in Petitioner's Exhibit No. 61, which is a list of exchanges whose licenses have been cancelled or terminated by the Motion Picture Patents Company, and which appears in the printed record at page 189, that among the exchanges there listed, is the Mullin Film Service of Watertown, New York, February 1st, 1909. How does that happen to appear in this list of exchanges whose licenses have been cancelled by the Motion Picture Patents Company? A. Well, I don't know why that should so appear. It is doubtless due to some error in com-

piling the various exchanges, and the offer of a license to this exchange may have been construed as a granting of the license. Since the license was never accepted or acted under, it could not be said to have ever been in existence. 1

Q. So that you are positive that the Mullin Film Service never had a license? A. Oh, yes, I am positive of that fact.

Q. Was there a licensed rental exchange known as the Pacific Coast Film Company, located at San Francisco, California? A. There never was such a licensed exchange.

Q. Did you ever have any correspondence with the Pacific Coast Film Company? A. Well, in January of 1909, when we were licensing a considerable number of exchanges, we telegraphed to this exchange asking them if they desired to have a license, and we never received any reply from them. 2

Q. I notice that in Petitioner's Exhibit 61, entitled "Exchanges whose licenses have been cancelled or terminated by the Motion Picture Patents Company," appearing at page 189 of the printed record, the name of the "Pacific Coast Film Company, San Francisco, California, February 1st, 1909," appears. Is that also a mistake? A. It is. 3

Q. Was there a licensed rental exchange known as the Philadelphia Film Exchange, located at Philadelphia, Pennsylvania? A. There was.

Q. Was the license of this exchange subsequently cancelled? A. It was cancelled on two weeks' notice, on March 15th, 1909.

Q. This cancellation was by virtue of the fourteen-day clause of the rental exchange agreement, was it not? A. It was.

Q. Had you had any difficulty with this exchange prior to the cancellation? A. Well, they were not leasing much film, and their payments were sometimes slow, and sometimes made C. O. D. They were not considered desirable as distributors of licensed motion pictures. 4

Q. Was there a licensed film exchange known as the Schiller Film Exchange, located at Chicago, Illinois? A. There was.

Q. Was this exchange cancelled? A. Yes.

Q. What was the occasion for the cancellation? A. Their license was cancelled on the 15th of May, 1909. They re-

- 1 refused to report customers supplied by them, or, rather, refused to make royalty payments on account of customers supplied with motion pictures by them, and also they were not leasing the required amount of film.

Q. Was there a licensed exchange known as the Southern Film Exchange, located at Birmingham, Alabama? A. There was.

Q. What became of that establishment? A. That exchange was consolidated with the Theatre Film Supply Company of Birmingham, Alabama, on February 15th, 1909.

- 2 Q. So that the number of exchanges in Birmingham was reduced by one by the voluntary consolidation on the part of the two owners? A. Yes.

Q. Was there a licensed rental exchange known as the Southern Film Exchange, located at Cincinnati, Ohio? A. There was.

Q. What was the history of that exchange? A. The license of that exchange was cancelled in August, 1909. It was in financial difficulties and was considerably in debt to a number of the producers of licensed motion pictures.

Q. Had it been keeping up its payments when due? A. It had not.

- 3 Q. Was there a licensed rental exchange known as the Southern Talking Machine Company, located at Dallas, Texas? A. A license was issued for such a concern, but it was never accepted. In January, 1909, they first advised the Patents Company that they would not accept the license, but in August of that same year they applied for a license, which was granted to them on the 15th of September, but on the 13th of October they notified the Patents Company that they were still in doubt as to the propriety of accepting the license, and the license never was accepted nor acted under, so that no such licensed exchange ever was really in
4 existence.

Q. I notice that in Petitioner's Exhibit No. 61, headed "Exchanges whose licenses have been cancelled or terminated by the Motion Picture Patents Company," appearing at page 189 of the printed record, there is, among other exchanges appearing there, the Southern Talking Machine Company of Dallas, Texas, October 14th, 1909. What is your explanation of this having been reported as a licensed exchange, the license of which has been cancelled by the Motion Picture Patents Company? A. That must have been so reported

through an error of the parties who compiled the records, doubtless having been misled by the fact that while the license was issued by the Patents Company, it was not acted under. Some mistake arose. I don't know how.

Q. Was there a licensed rental exchange known as the Standard Film Exchange located at Chicago, Illinois?

A. There was.

Q. What change occurred in that rental exchange, if any?

A. Well, this exchange was criticized for violating its agreement, and maintaining a distributing office in Minneapolis, from which it sub-rented licensed motion pictures, without the authority of the Patents Company, and it subsequently signified its intention of giving up its license. The license was formally cancelled on the 22nd of September, 1910.

Q. Who was in charge of the Standard Film Exchange?

A. A party by the name of Hopp.

Q. Is that the Hopp whose testimony has been given here on behalf of the petitioner in this action? It is.

Q. Was there a licensed rental exchange known as the Star Film Exchange, located at Chicago, Illinois? A. There was.

Q. Was the license of this exchange cancelled? A. It was. It was cancelled March 12th, 1909, for supplying licensed motion pictures to unlicensed exhibitors. The film supply of this exchange was seized while in the possession of unlicensed exhibitors. This cancellation, however, was subsequently withdrawn, upon the condition that the exchange pay a penalty of \$250. But the license was finally cancelled again on the 15th of May, 1909. Some time prior to that the exchange had not been leasing the required quantity of licensed motion pictures.

Q. Was there a rental exchange known as the Superior Film Supply Company, located at Toledo, Ohio? A. There was.

Q. Did this exchange have a license from the Motion Picture Patents Company? A. It did.

Q. Was the license cancelled? A. It was. It was cancelled on the 23rd of August, 1909, on two weeks' notice. This exchange rented film that it had not obtained from licensed manufacturers, and its financial standing was poor.

Q. Was there a licensed rental exchange known as the Swaab Film Service, located at Philadelphia, Pennsylvania?

A. There was.

1 Q. Was the license of the Swaab Film Service cancelled?
A. It was, on January 3rd, 1911.

Q. What was the reason for that cancellation, Mr. Marvin? A. There were a number of reasons that led up to the cancellation of that license. Swaab, in the latter part of 1909, instituted and maintained an unauthorized distributing agency in the City of Pittsburgh, to which motion pictures were shipped in bulk and distributed to exhibitors in Pittsburgh in unfair competition with the Pittsburgh exchanges, and in April, 1910, Swaab unfairly competed with other exchanges by shipping films ahead of the release date, to Baltimore. By shipping out before 8 o'clock in the morning, he was able to catch a train which enabled him to get the films into Baltimore for exhibition before exchanges who observed the conditions of their license were able to do so. He was penalized for this offense in the amount of \$100. About this time, complaints reached the Patents Company that licensed motion pictures were being exhibited in unlicensed houses in the vicinity of York, Pennsylvania, and upon investigation it was found that these pictures were being supplied by one Kelly, and a quantity of licensed motion pictures was seized when in the possession of Kelly at York. It was found that these pictures had been supplied by Swaab, who had been shipping considerable quantities of motion pictures to Kelly, who had been using them unlawfully. Complaints of Kelly's actions were made not only by exhibitors, but by other licensed exchanges. Kelly did quite an extensive sub-renting business, dealing both in licensed and unlicensed motion pictures. The business was carried on for a considerable length of time. In the Spring of 1910 Swaab supplied licensed motion pictures to a traveling exhibitor named Anderson. Anderson gave a great many more exhibitions with these motion pictures than were reported to the Patents Company. The royalties were not remitted for a number of these exhibitions. Anderson in his exhibitions not only used licensed motion pictures, but he also used unlicensed motion pictures. Swaab issued a circular letter containing objectionable references to other licensed exchanges and his advertisements in some of the papers were considered undignified and undesirable on the part of an exchange licensed by the Motion Picture Patents Company to distribute the products of licensed producers. Swaab was finally summoned by the

Patents Company to New York to show cause, if possible, why his license should not be cancelled. He appeared but was able to make no adequate explanation of his conduct, nor to show any reason why his license should not be cancelled and his license was cancelled on the 3rd of January, 1911.

Q. Mr. Swaab states that on the occasion when he came to New York to give some explanation of his conduct, that he saw you, and that you insisted upon reading to him word for word the entire contents of the rental exchange agreement, and that in response to questions which he asked of you, you would give him no answer except to continue reading from the exchange license agreement. Is that a correct statement of the interview between you and Mr. Swaab?

A. That is not a correct statement of the interview. It is an absurd and untrue statement. It is true that I did read some of the clauses of the exchange license agreement to Mr. Swaab, and those were the clauses which he had violated. I did so for the purpose of more explicitly calling his attention to the particular violations with which he was charged. Mr. Swaab was unable to make any satisfactory explanation or offer any justification for such violations.

Q. You have referred to a traveling exhibitor named Anderson. Is that the Anderson who was called as a witness in this case last July by the petitioner? A. It is.

Q. Were there rental exchanges located at Chicago, Omaha and St. Louis under the name of W. H. Swanson & Company? A. There were.

Q. Were these three exchanges licensed by the Motion Picture Patents Company? A. They were.

Q. What was the history of these exchanges with regard to their relations with the Motion Picture Patents Company? A. These exchanges were never conducted in an orderly and satisfactory manner. From the time that Swanson was licensed, he was a disturbing and disorganizing element. He publicly attacked the organization and policy of the Patents Company, and his utterances were calculated to breed dissension among the licensees of the Patents Company and to deter others from recognizing the patents owned by the Patents Company, and taking licenses from the Patents Company or observing the terms of their licenses after they were granted. He was not careful to refrain from supplying licensed motion pictures to unlicensed exhibitors, nor to report his customers to the Patents Company nor to remit the

1 royalties from them. His financial standing was precarious and the licenses of his offices were finally cancelled on two weeks' notice. He was notified of the cancellation on the 26th of February, 1909.

Q. Was there a licensed rental exchange located at Rochester, New York, known as the Talking Machine Company? A. There was.

2 Q. What change occurred in the relations between the Motion Picture Patents Company and the Talking Machine Company? A. The license of this exchange was finally cancelled on July 6th, 1909, after a good deal of trouble with this exchange of various kinds. To start with, in March, 1909, this exchange indulged in unfair competition with an exhibitor in Canandaigua, who was supplied by another exchange. The Talking Machine Company, or Mr. Powers, the principal owner, owned or had an interest in a theatre in Canandaigua and utilized the resources of the exchange in unfair competition with the other exhibitors. The exchange occasionally failed to send in correct lists of the customers and to make the payments of royalties to customers. It refused to supply lists at times convenient to the Patents Company. It falsely reported that it was advised that a number of the licensed manufacturers opposed the granting of a license to another exchange in its territory. After being repeatedly urged to make payments and statements of exhibitors' royalties, it telegraphed that it had done so or would do so on a certain date, and did not do so. During April and May, 1909, this exchange shipped a quantity of motion pictures to an unlicensed exchange that was started in the City of New York by Powers.

3 Q. Was that P. A. Powers? A. Yes, P. A. Powers. It was understood that Mr. Powers was also at that time interested in an independent exchange in Rochester. In May, the Talking Machine Company advised the Patents Company that it was unable to conduct its business at a profit, and asked the advice of the Patents Company as to the best method of disposing of its business. The Patents Company demanded that the film which the exchange had shipped to the independent exchange in New York, should be returned, but up to the time of the cancellation of the license of the exchange, this film had not been returned.

4 Q. What do you mean by "returned" in this connection,

Mr. Marvin? A. I mean that the Patents Company demanded of the Talking Machine Company of Rochester that it secure the return to itself of the motion pictures that it had shipped to the unlicensed exchange in New York City. 1

Q. Was P. A. Powers one of the owners of the Talking Machine Company of Rochester? A. He was.

Q. One of the principal owners? A. Yes.

Q. Is he still in the motion picture business? A. I understand that he is. But not as a licensee of the Motion Picture Patents Company.

Q. How was the Talking Machine Company of Rochester spoken of usually? A. It was spoken of as the Pat Powers exchange. 2

Q. Was there a licensed rental exchange known as the Theatre Film Supply Company, located at Charlotte, North Carolina? A. There was.

Q. Was the license of this exchange cancelled by the Motion Picture Patents Company? A. It was. It was cancelled on December 4th, 1909.

Q. What was the reason for the cancellation? A. Well, this branch continually exchanged motion picture film with its branch at Birmingham and indulged in double service to exhibitors in connection with the Birmingham branch. It was continually in financial straits, and its license was finally cancelled and the owners were instructed to remove the supply of motion picture films to the Birmingham office. 3

Q. Was the Birmingham office known as Theatre Film Supply Company also, or don't you recall that? A. I believe it was. It may have had a different name. I think it was known as the Theatre Film Supply Company.

Q. Was there a licensed rental exchange known as Theatre Film Supply Company located at San Francisco, California? A. There was. 4

Q. What was the history of this exchange? A. The license of this exchange was cancelled on February 8th, 1910, after the Patents Company had obtained evidence that this exchange had sold licensed film or permitted the same to be sold through the alleged instrumentality of a concern known as the Western Amusement Supply Company, which had an office in the same premises as the Theatre Film Service Company, and was practically owned by

1 the same parties, and upon the further evidence that Mr. Clapham, the principal owner of the Theatre Film Service Company, had a very large interest in an independent film exchange.

Q. Is the Mr. Clapham to whom you refer Mr. A. J. Clapham? A. Yes.

Q. Is he the witness who was called in this case in July last by the petitioner? A. He is.

2 Q. Was there a licensed rental exchange known as the Twentieth Century Optiscope Company, having branches in Chicago and Kansas City? A. There was.

Q. What became of the Twentieth Century Optiscope Company? A. It voluntarily surrendered its license on the 18th of March, 1909, and on the 20th of March, 1909, the Patents Company sent formal notice of the cancellation.

Q. So that as a matter of fact the licenses of the Twentieth Century Optiscope Company were not in reality cancelled by the Patents Company? It voluntarily surrendered its license? A. That is a fact.

3 Q. This formal notice of cancellation was sent out in order to clear up your books, and in order to notify the trade that the relations between the Motion Picture Patents Company and the Optiscope Company had terminated? A. That is all.

Q. Was there a licensed rental exchange known as the United States Film Exchange, located at Chicago? A. There was.

4 Q. Was the license of this exchange cancelled? A. It was. It was cancelled on May 15th, 1909, because the exchange was not leasing the required quantity of film. This exchange had previously requested permission to consolidate with the Star Film Exchange of Chicago, but, although the permission was granted, the consolidation was not effected.

Q. Was there a licensed rental exchange known as Vaudette Film Exchange Company, located at Grand Rapids, Michigan? A. There was.

Q. What is the history of the relations of the Motion Picture Patents Company with the Vaudette Film Exchange Company? A. This exchange was permitted to consolidate with the National Film Exchange—

Mr. GROSVENOR: Are you reading from your memorandum in testifying?

1

The Witness: I am not reading. I am refreshing my recollection. The wording of the memorandum I am using is different, but the facts are essentially the same.

By Mr. KINGSLEY:

Q. Proceed. A. The exchange was permitted to consolidate with the National Film Exchange of Detroit, Michigan, in November, 1909. The consolidated exchange was subsequently known as the National Vaudette Company.

2

Q. At the time of this consolidation, was the Grand Rapids office of the Vaudette Film Exchange Company closed? A. I believe that it was.

Q. And the supply of motion pictures was sent to the National Film Exchange of Detroit? A. Yes.

Q. Have you with you any letter written by the Vaudette Film Exchange Company with respect to its proposed consolidation with the National Film Exchange of Detroit? A. I believe I have their letter of application for the consolidation.

3

Q. Will you produce it, please? A. (Witness produces paper.)

Q. I show you a letter dated November 3rd, 1909, signed "Vaudette Film Exchange, A. J. Gilligham." Did you receive that letter on or about the time that the Vaudette Film Exchange Company was communicating with the Motion Picture Patents Company relative to a proposed consolidation with the National Film Exchange of Detroit? A. Yes. This is a letter that I received about the 3rd of November, containing an application for consolidation.

4

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection as heretofore made to the other exhibits, and to all this line of testimony.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 98," and is as follows:

Defendants' Exhibit No. 98.

Nov. 3rd, 1909.

Motion Picture Patents Company,
80 Fifth Avenue,
New York City.

Gentlemen:

I, being the owner and manager of the Vaudette Film Exchange of Grand Rapids, Michigan, a licensee of your Company, most respectfully ask for permission to consolidate my office with that of the National Film Exchange of Detroit, Michigan, also one of your licensees.

I have the consent of the owners of the National Film Exchange in applying for this consolidation; and the owners of the National Film Exchange and myself positively promise that we will not buy a lesser amount of film than what both of the offices are buying at the present time, namely, twenty-two (22) reels, and, in fact, I feel candid in saying that if we receive the consent of your Company for this consolidation that we will be in a position to buy more films than what both of the offices are buying at the present time, and we will make this office one of the leading exchanges of America.

Grand Rapids is a very small town—in fact an undesirable point, and I fully appreciate the fact that the days of the exchanges who are only purchasing a small number of reels are limited. The situation of to-day demands variety, and by being able to purchase films from all of your licensees, we would be in a position to compete with any of the other exchanges that ship into the territory where the office would be located—Detroit, Michigan.

Hoping to be favored, I am

Yours very truly,

VAUDETTE FILM EXCHANGE,

A. J. Gilligham.

JK/

The Title Under which New office would be known,
National-Vaudette Film Exchange.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2 o'clock P. M., at the same place. 1

NEW YORK CITY, October 17th, 1913.

The hearing was resumed pursuant to adjournment at two o'clock P. M., October 17th, 1913, at Hotel Manhattan, New York City.

The appearances were the same as at the morning session. 2

Thereupon, H. N. MARVIN resumed the stand.

Direct examination continued by Mr. KINGSLEY:

Q. Was there a licensed rental exchange known as the Western Film Exchange, located at St. Louis, Mo.? A. There was.

Q. Was the license of this exchange cancelled? A. The license of this exchange was cancelled on the 19th of July, 1910. In 1909 this exchange, which had taken over the Kleine Optical Co., of St. Louis, previously, in 1909, was censured, and in lieu of cancellation of its license it was fined for supplying double service to exhibitors. This exchange was one of the exchanges that was allied with Crawford, of St. Louis, in the proposition of withdrawing from its license with the Patents Company, and going into the independent business. 3

Q. This proposition in which Mr. Crawford was interested involved an arrangement between a number of exchanges to leave the Patents Company at the time? A. It did.

Q. Were there two other exchanges called Western Film Exchange, one located at Milwaukee, Wis., and the other at Joplin, Mo.? A. There were. 4

Q. Were these exchanges associated in any way with the Western Film Exchange, of St. Louis, to which I have just referred? A. They were associated with them.

Q. What is the history of the relations between the

1 branches of the Western Film Exchange at Milwaukee, and
at Joplin, and the Motion Picture Patents Company? A.
The exchange at Joplin was penalized in lieu of cancella-
tion of its license in 1909, for violating the release day rule,
and later on in that same year, both the Joplin and the
St. Louis branches were penalized for exchanging film, and
for giving double service to exhibitors. In November, 1910,
both of these exchanges voluntarily surrendered their li-
censes. Formal notice of cancellation was subsequently
sent out on the 21st of November, 1910.

2 Q. At the time these exchanges surrendered their li-
censes did they give any reasons for it? A. Well, they an-
nounced as their reason that "because it is the general
opinion at the present time, that the Independent manu-
facturers are turning out a better grade of productions."
I am quoting now from a communication received from
them.

Q. Did they send out a circular letter containing the
statement which you have just quoted? A. They did.

3 Q. I show you a letter on the letterhead of the Western
Film Exchange, signed Western Film Exchange, by J. R.
Freuler, general manager, and ask you if that is a copy
of the circular which they sent out about the time they
surrendered their licenses? A. It is.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objections to this paper
as heretofore stated, and it is objected to on the fur-
ther ground that it is the act, and purports to be the
act of a third party, one not a defendant in this
suit.

4 The letter offered is received in evidence and is
marked by the Examiner "Defendants' Exhibit No.
99," and is as follows:

Defendants' Exhibit No. 99.

1

Letterhead of

WESTERN FILM EXCHANGE,

Milwaukee, Wis.,

Mr. Jack Elliott,
Minneapolis, Minn.

Dear Sir:—

From now on we are going to buy the Independent output.

2

The first thing you will no doubt ask is, why is the Western Film Exchange taking this step? We can explain this to you in very few words:

Because, it is the general opinion at the present time, that the Independent Manufacturers, are turning out a better grade of productions.

The film situation has been a careful study with us, which makes it possible for us, to know exactly what exhibitors want and what their patrons demand, and we have left no stone unturned to give it to them. The fact is, we have been asked repeatedly, point blank, recently, why we did not arrange to purchase some of those excellent makes of the Independent market.

3

Do not get the impression, that we are either friend or foe of any particular faction; we are not. We are simply looking for quality and quality only, and it makes absolutely no difference to us who the maker is.

We made arrangements for the entire Independent output, and the following is a complete list of manufacturers whose products we will have to select from.

American	Powers	Kalem
Imp	Nestor	Biograph
Bison	Yankee	Edison
Thanhouser	Reliance	Lubin
Ambrosia	Eclair	Pathe
Atlas	Defender	Melies
Capitol	Columbia	Urban Eclipse
Lux	Champion	Gaumont
Italia	Vitagraph	Selig
Cines	Essanay	

4

Great Northern Sales Company

1 This change will be to our mutual advantage. In the future and for some little time to come, you are going to have the usual opportunity, to show pictures of every make, licensed and unlicensed. How does that strike you?

Get on the job quick; use it as the biggest feature you have ever succeeded in arranging for. Tell your patrons about it with enthusiasm. Tell them what you have been able to secure for them.

IF YOU EVER HAD A CHANCE TO REAP A HARVEST, IT IS RIGHT NOW.

2 Write us today for our proposition. You have everything to gain and nothing to lose.

Anticipating your early response, we are,

Yours very truly,

WESTERN FILM EXCHANGE,

Per

J. R. Freuler,
General Manager.

3 By Mr. KINGSLEY:

Q. Was there a rental exchange known as the Wonderland Film Exchange, located at Pittsburgh, Pa.? A. There was.

Q. Did that exchange have a license from the Motion Picture Patents Company? A. It did.

4 Q. What is the history of the relations between that exchange and the Motion Picture Patents Company? A. The license of that exchange was cancelled in March, 1909, because it supplied licensed films to unlicensed exhibitors. Subsequently the exchange applied for reinstatement of the license, which was offered on condition that they pay a penalty of \$250. Subsequently the exchange applied for permission to consolidate with the Duquesne Film Exchange, of Pittsburgh, Pa. The consolidation was made with the consent of the Patents Company in May, 1909.

Q. The Duquesne Film Exchange, of Pittsburgh, you have already referred to as a licensed exchange? A. Yes.

Q. The Wonderland Film Exchange was consolidated with it? A. It was.

Q. Was there a licensed exchange known as the Whee-

lan-Loper Company, located at Dallas, Texas? A. There was. 1

Q. Did this exchange subsequently change its name?

A. It did.

Q. What was the new name? A. Its name was changed to the J. D. Wheelan Exchange. This exchange also absorbed or took over the Alamo exchanges, concerning which I have already testified.

Q. Where was the World Film Exchange located? A. A license in the name of such an exchange, to be located at Harrisburg, Pa., was granted in September, 1909, but the exchange never started in business, and the license was withdrawn February 8th, 1910, as a matter of form. 2

Q. In Petitioner's Exhibit No. 61, entitled "Exchanges Whose Licenses Have Been Cancelled or Terminated by the Motion Picture Patents Company," which appears at page 189 of the printed record, I notice that the World Film Exchange, Harrisburg, Pa., under date of February 8th, 1910, is listed. Is that also one of the exchanges furnished in this list, the license of which was never in reality cancelled? A. Yes. The license of that exchange could not fairly be said to have been cancelled because the exchange never was in operation, the license was never acted under, and practically was never in existence. 3

Q. So there was no business to be affected by a cancellation or withdrawal of that license? A. None whatever.

Q. In Petitioner's Exhibit No. 61, to which I have called your attention, there are listed the Southern Talking Machine Company, Dallas, Texas, October 14, 1909; World Film Exchange, Harrisburg, Pa., February 8, 1910; Mullin Film Service, Watertown, N. Y., February 1, 1909, and Pacific Coast Film Company, San Francisco, Cal., February 1, 1909. Regarding these four, you have testified that no license was ever formally accepted by them? A. Well, no license was formally accepted by either or any of them in the sense that they never acted under any license, they never did any business under any license from the Patents Company, and no license from the Patents Company to them was ever in practical effect. 4

Q. Regarding these four, is it your testimony that they never were in business? A. They never were in business as licensees of the Motion Picture Patents Company.

1 Q. Consequently nothing was ever done with respect to these licenses which would have any effect upon any existing business? A. Nothing whatever.

Q. Did you prepare at my request a statement, or summary, showing the number of exchange licenses granted or offered subsequent to February 1st, 1909? A. I did.

Q. And do you know that that is a correct statement or summary? A. I do.

Q. Have you it with you? A. I have.

2 Mr. KINGSLEY: We offer it in evidence.

The statement or summary referred to is received in evidence and marked "Defendants' Exhibit No. 100."

Defendants' Exhibit No. 100.

EXCHANGE LICENSES GRANTED OR OFFERED SUBSEQUENT TO FEBRUARY 1ST, 1909.

3 S. Nye Bass Film Exchange License Agreement dated July
New Orleans, La. 28, 1909. License cancelled
February 8, 1910. See cancellations.

Miles Brothers, Notice of granting this li-
Baltimore, Md. cense was sent out in Exchange
Bulletin No. 3, dated March 20,
1909. License cancelled April
15, 1910. See cancellations.

4 Mitchell Film Exchange, Licensed in August, 1909, the
Memphis, Tenn. name first appearing on bulletin
dated August 23, 1909. Bought
by General Film Company.

Moore's Film Exchange, Notice of granting license sent
Washington, D. C. in Exchange Bulletin No. 23,
dated April 23, 1910. Bought
by General Film Company.

Motion Picture Supply Co., Exchange Agreement dated
Rochester, N. Y. October 22, 1909. Bought by
General Film Company.

Moving Picture Service Co., License Agreement dated May 1
Syracuse, N. Y. 4, 1909. Bought by General
Film Company.

Southern Talking Machine Co. Application for license was
Dallas, Texas. granted on September 15, 1909.
Exchange never signed the
agreement or operated under a
license.

World Film Exchange, Application granted Septem-
Harrisburg, Pa. ber 15, 1909, and License Agree-
ment signed by exchange, but no
business whatever was done un- 2
der the Agreement and permis-
sion to open was withdrawn
February 28, 1910.

By Mr. KINGSLEY:

Q. Is this (Exhibit 100) a list of those which were of-
fered and accepted, and those which were offered, and were
not accepted? A. Well, this (Exhibit 100) includes one
that did not accept the license agreement.

Q. Are there some others which did not accept? A. I 3
think not—that were offered—there may have been some
others that were offered and were not accepted. I think the
only one here that was offered and not accepted, or acted
under, was that to the Southern Talking Machine Company,
of Dallas, Texas.

Q. And the World Film Exchange, they did sign it but
did not act under it? A. Yes, they signed the agreement, but
they did not act under it, and did no business under it.

Q. Was there an exchange in Memphis, Tennessee, known
as the Mitchell Film Exchange, Lewis Mitchell, proprietor 4
or manager? A. There was.

Q. I show you a letter upon the letterhead of the Bir-
mingham Film Supply Company, signed Birmingham Film
Supply Company, A. C. Bromberg, and ask you if you re-
ceived that letter? A. We did.

Mr. KINGSLEY: I offer it in evidence.

The letter referred to is received in evidence and
marked "Defendants' Exhibit No. 101."

1

Defendants' Exhibit No. 101.

Letterhead of
BIRMINGHAM FILM SUPPLY CO.

Incorporated

Birmingham, Ala., 5/17/10.

Motion Picture Patents Co.,
New York City, N. Y.

2 Gentlemen:—

In response to yours of the 13th, in reference to Capt. W. D. Ament of Jackson, Tenn. received and noted, and we beg to advise you that we are not at present supplying this place. When we did supply him, we shipped him one reel averaging from 30 to 60-days old, and one commercial, no age guaranteed, 12-reels per week, and paid us a price of \$47.00 per week for the Jackson house, he to ship his house in Meridian in order to obtain the above price. We lost his service due to the fact, that Mitchell furnishes the Marlowe Theatre, and he told Capt. Ament, that he would put goods
8 into Jackson ahead of him regardless of what price he paid us, but if he would come and take films from him, he would make him a price of \$40.00, thereby Capt. Ament closed the deal with Mitchell of Memphis, who supplies both houses 21-released films per week.

Very truly yours,

BIRMINGHAM FILM SUPPLY CO.,

A. C. Bromberg.

ACB/w/

4

By Mr. KINGSLEY:

Q. Is that the Mitchell to whom the witness Boone referred in his testimony given in this action in July of 1913?
A. It is.

Q. I show you a letter on the letterhead of the Birmingham Film Supply Company, signed Birmingham Film Supply Co., per A. O. Johnson, Manager, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

1

Mr. GROSVENOR: I object to that letter, because it is an effort to prove by hearsay the statements made in the letter.

The letter referred to is received in evidence and marked "Defendants' Exhibit No. 102."

Defendants' Exhibit No. 102.

Letterhead of

2

BIRMINGHAM FILM SUPPLY CO.

Birmingham, Ala., 7/21/9.

Motion Picture Patents Co.,
New York City, N. Y.

Gentlemen:—

We hand you attached herewith letter from our client of Atlanta Ga. and you will note that the Theatre Film Supply Co., released today's release of the Pathe one day before release date. The subject in question was released on the 21st, and was shown in Atlanta, on the 20th. We appreciate the fact that this is a direct violation of your rules, and we would respectfully ask that you take steps to stop this practice at once. You will note that our client in Atlanta refuses to use this subject in question, and of course we will lose \$10.00 on account of our competitor taking such liberties as outlined above.

3

Thanking you to give the above prompt attention, and awaiting your response, we beg to remain,

Very truly yours,

4

BIRMINGHAM FILM SUPPLY CO.,

Per A. O. Johnson, Mgr.

A.O.J/w/

By Mr. KINGSLEY:

Q. Have you been questioned at any time in this action respecting the arrangement made between the Motion Picture

1 Patents Company and the licensed rental exchanges, by which the latter were to collect the royalties upon projecting machines? A. I believe some questions have been asked me in reference to that subject.

Q. Did you find that the change in the collection of royalties, and by that I mean, the change in the method of collection of royalties, relieved the situation from some confusion and uncertainty; and if so, in what respect?

A. At the outset the Patents Company itself collected the royalties directly from the exhibitors. Under that system it was necessary that the Patents Company should receive payment in advance for royalties from the exhibitors, and then notify exchanges that the royalties had been paid, so that the exchange might know that it was at liberty to supply service to the exhibitor because the exhibitor was licensed. When exhibitors applied to exchanges for film service it was necessary for the exchange, or the exhibitor, to communicate with the Patents Company, and apply for a license, and for the Patents Company to act upon the application, notify the exhibitor, and receive the royalty before the exchange was at liberty to start service. This system involved delay, and it was inconvenient to the exhibitor, as well as to the exchange. Furthermore, exchanges were sometimes in doubt as to whether exhibitors who alleged that they had paid royalties to the Patents Company had really so paid royalties or not, and therefore, they were in danger, either of losing a good customer, or of violating their exchange license agreement, by supplying service to a customer who was not licensed. All of this led to considerable confusion and delay, and the system was found to be inefficient. For the purpose of increasing the efficiency of the service, and in deference to a number of requests and suggestions made by the proprietors of exchanges, the Patents Company changed this system by permitting an exchange to collect royalty from an exhibitor, and forward the royalty to the Patents Company. Under this system an exchange was permitted to start service immediately whenever an exhibitor made application for service, to at once collect from the exhibitor the royalty for one week, and forward that royalty, with the application for a license on the part of the exhibitor to the Patents Company, and to start service without waiting to hear from the Patents Company. If the application of the exhibitor

was favorably acted upon the exchange continued to collect the royalty and to supply the service. If, on the other hand, the application of the exhibitor was rejected, the exchange was notified of the rejection, and it discontinued the supply of service to the exhibitor. The exhibitor was permitted to pay the royalty direct to the Patents Company, if he preferred to do so, but the exchange was permitted to collect the royalty and forward it in the manner above stated.

Q. I show you a letter on the letterhead of H. Lieber Company, signed H. Lieber Company, and ask you if you received that letter? A. I did receive that letter.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: I object to that letter, as being outside of the issues, having been written by one not a party defendant to this suit, nor did the writer have any relation to any defendant, making the letter immaterial, incompetent and irrelevant.

The letter referred to is received in evidence, and marked "Defendants' Exhibit No. 103."

Defendants' Exhibit No. 103.

Letterhead of

THE H. LIEBER COMPANY.

Indianapolis, Ind.,

April 10, 1909.

Motion Picture Patents Co.,

New York, N. Y.

Gentlemen:—

We acknowledge receipt of your Exchange Bulletin #4 and Exhibitors Bulletin #4.

Regarding the Exchange Bulletins we wish to say that we do believe that the situation can be very much relieved by placing the responsibility for the royalty fees on the various Exchanges, and we are fully in accord with your further statement that your Company and the Exchanges must work hand in hand if the entire proposition is to prove a success. We note from your Exchange Bulle-

1 tin, however, that you anticipate still continuing the royalty fee for all theatres at the same price of \$2.00 per week. We were led to believe that a change was to be made on May 1st, and we wonder whether there has been any change in your plans. We still insist that the fee of \$2.00 is too high for the small towns. We have not been successful in getting any replies to our correspondence at all, and we can state that to all of the letters that we have written you we have had but one reply.

Awaiting your further kind favors, we beg to remain

2 Very truly yours,

THE H. LIEBER CO.,
R.

Q. Was the H. Lieber Company a licensed rental exchange? A. It was.

Q. Licensed by the Motion Picture Patents Company? A. It was.

3 Q. One of the exchanges regarding which you have testified today? A. Yes.

Q. I show you a letter on the letterhead of the Clune Film Exchange, dated November 22nd, 1909, and signed W. K. Clune, and ask you if you received that letter? A. I did.

Mr. KINGSLEY: I offer it in evidence.

Mr. GROSVENOR: Same objection.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 104," and is as follows:

4

Defendants' Exhibit No. 104.

1

Letterhead of

CLUNE FILM EXCHANGE

Los Angeles, California,

Written—November 22nd, 1909.

Motion Picture Patents Company,
#80 Fifth Ave.,
New York.

2

Gentlemen:—

The film situation in Los Angeles and the territory tributary thereto, is in a deplorable condition, and demands your immediate attention. We wish to protest and subsequently demand that the Motion Picture Patents Company do arrange to have the manufacturers cease mailing or distributing synopsis of new releasements of subjects, other than through the licensed exchanges of this territory.

We are constantly receiving communications for service demanding first or second run films, which is impossible at the small rentals to supply. In view of the fact that there are three exchanges in this city, we are buying to the capacity of our business, and consequently from week to week our losses are heavier. We, therefore, urgently request that this matter be taken up immediately, as something must be done to relieve the conditions existing here, and done quickly, or the exchanges will be compelled to go to the wall.

3

We also wish to call your attention to the poor quality of films put out by the Edison, Kalem and Biograph Companies. We find that the material in the films is brittle and quickly destroyed.

4

The situation is becoming very critical indeed, as the Independents are receiving their films at much lower purchase price per foot, and are making serious inroads on our business by putting their film out at cheaper rental rates; and therefore, we feel that the American manufacturers and licensed manufacturers, whom we are representing, should at once formulate some plan to aid us in controlling the situation in this territory.

1 We do not wish to convey the impression that we have become discouraged in the film business, but we do want to make it plain to you that we will have to obtain some consideration at your hands and that in the very near future, in order to cope with the existing conditions, which are becoming worse and worse each week.

2 We wish to complain against the extra charges levied by the Pathe Company for coloring and acting, which they attach to about every third reel, and upon which extra charges we are allowed no rebates. It seems to us that there is an established price per foot, and therefore, the question arises, why this extra charge should be exacted? For instance; the "Pathe Drink Picture" of some 2,100 feet, and costing us in the neighborhood of \$235.00, has proven to be almost a dead loss to us, inasmuch as the larger cities do not want it and the smaller ones can not use it. However, we are obliged to take it and pay the extra charges on coloring and acting.

3 We sincerely trust that this plain statement of cold facts, briefly put before you, will appeal to your earnest consideration and enable you to observe the urgent necessity for acting upon these matters immediately, as it seems to us to be of such vital importance that delay would prove fatal.

We beg to remain,

Yours truly,

W. H. CLUNE,

T. L. TALLY,

Kay-Tee Film Exchange,

W. E. Kreiter, Mgr.

4 By Mr. KINGSLEY:

Q. Of what was Mr. W. H. Clune proprietor? A. Clune Film Exchange.

Q. I notice that this letter is also signed T. L. Tally and by Kay-Tee Film Exchange, W. E. Kreiter, Manager. A. Tally was the proprietor of another licensed exchange in Los Angeles, and Kreiter was manager of the Kay-Tee Film Exchange, licensed film exchange of Los Angeles, California.

Q. Is the Kay-Tee Exchange the one regarding which you testified this morning as having become bankrupt? A. It is.

Mr. KINGSLEY: I have no more questions to ask Mr. Marvin today. 1

Mr. GROSVENOR: You have not closed your examination of Mr. Marvin?

Mr. KINGSLEY: No. As I said, there were some other matters which I wish him to look up for me and regarding which I wish to question him at some length.

Mr. GROSVENOR: I won't begin the cross examination, then, until you have concluded the direct examination. 2

Mr. KINGSLEY: I have closed, except that I want to reserve the right to recall him.

Mr. GROSVENOR: All right.

The Examiner: The hearings are adjourned by agreement of counsel until 10:30 A. M., Tuesday, October 21st, 1913, to be resumed at Room 159, Hotel Manhattan, New York City.

1

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,
Petitioner,

v.

2 MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, October 21st, 1913.

Upon application of counsel for petitioner, counsel for defendants consenting thereto, the hearings were postponed until 10:30 o'clock A. M., November 10th, 1913, to be resumed at Manhattan Hotel.

3

NEW YORK CITY, November 10th, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 10th, 1913, at Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, attorney for George Kleine,
Essanay Film Manufacturing Company, Selig
Polyscope, George K. Spoor and W. N. Selig.
Mr. JAMES J. ALLEN, appearing for Vitagraph
Company of America, and Albert E. Smith.

1

Mr. CALDWELL: I want to note on the record the
withdrawal of my firm as counsel or attorneys for
Gaston Melies and the Melies Manufacturing Com-
pany.

FRANK L. DYER, the next witness called by defend-
ants, of lawful age, duly sworn, deposed:

2

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Dyer, and in what business
are you engaged? A. I live at Montclair, New Jersey, and
am President of the General Film Company.

Q. How long have you been the President of the Gen-
eral Film Company? A. Since December, 1912.

Q. And prior to December, 1912, in what business were
you engaged? A. To July, 1908, I acted as general counsel
for Mr. Edison, and in addition my time was almost entire-
ly occupied as the executive head of his various corpora-
tions. I was President of the National Phonograph Com-
pany, a concern that manufactured and sold phonograph
records and also sold phonographs; I was general manager
of the Edison Phonograph Works, a concern that manu-
factured Edison phonographs; I was Vice-President of the
Edison Manufacturing Company, a concern that manufac-
tured and sold moving picture films and sold Edison Kinet-
oscopes, which were made by the Edison Phonograph
Works, and which also manufactured and sold Edison
primary batteries. I was President of the Edison Busi-
ness Phonograph Company, a concern that sold Edison
business phonographs, which were made by the Edison
Phonograph Works. I was President of the Bates Manu-
facturing Company, a concern that sold the Bates Number-
ing Machine made by the Edison Phonograph Works. I
was Vice-President of the Edison Storage Battery Com-
pany, a concern that manufactured and sold Edison Storage

3

4

1 Batteries. I was Director of the Edison Portland Cement Company, a concern that manufactured and sold Edison Portland cement. I was a Director of several of the foreign corporations, whose names I do not now recall, and had the executive management of the various concerns which sold Edison products in Great Britain, France, Germany, Australia and Argentine. I was President of the Motion Picture Patents Company from December, 1908, to November, 1912, and I have been a Director of the General Film Company since its formation.

2 Q. Now, prior to 1908, in what business were you engaged? A. I was general counsel for Mr. Edison from April, 1903, to July, 1908, and organized at the Edison Laboratory a well equipped legal department that had charge of Mr. Edison's patents and legal work.

3 Q. At what time was the Edison Manufacturing Company succeeded by the Thomas A. Edison Company, Incorporated? A. I think it was March 1st, 1912, but it may have been March 1st, 1911, that, at my suggestion the name of the National Phonograph Company was changed to Thomas A. Edison, Incorporated, and at that time the National Phonograph Company acquired the property of the Edison Manufacturing Company, the Bates Manufacturing Company and the Edison Business Phonograph Company.

Q. You were President, were you not, also, of the Thomas A. Edison Company, Incorporated? A. Yes, I was President of the Thomas A. Edison Company, Incorporated, from the time its name was changed until I resigned.

4 Q. And one of the principal businesses of that company was the motion picture business, was it not? A. The principal business of the Thomas A. Edison Company, Incorporated, was the handling of Edison phonographs. That business was probably as large as the entire moving picture business of the country, but the business of handling moving picture films was an important part of its business.

Q. Prior to 1903, you were engaged actively in the practice of patent law, were you not? A. I was.

Q. Have you ever made any particular study of the industrial arts in connection with your work as a patent attorney? A. Yes, I have always been interested in me-

chanical matters. I am a member, or rather, an associate member of the American Society of Mechanical Engineers, my membership in that society being based on my work as an inventor. 1

Q. What connection, if any, did you have with the business end of the motion picture business after you went with Mr. Edison, in 1908, and up to the time when you left him? A. I had the executive charge of the motion picture business, and kept pretty close track of it. Of course, my work was very general. I was quite familiar with the manufacturing operations and frequently visited the studio. 2

Q. You had occasion also to frequently visit and inspect the so-called manufacturing plant at which the positives were printed? A. Oh, yes; I was entirely familiar with the plant, and frequently went to it, and was consulted about changes that were made from time to time, and enlargements of the plant. We also changed the process of developing, while I was connected with Mr. Edison's companies. Primarily, the developing was carried out on drums, and later the so-called rack system was introduced. 3

Q. In your capacity as Vice-President of the company, and subsequently, President of the Edison Manufacturing Company, having general supervision of the business of the company, were you to some extent familiar with the operations of your competitors? A. Yes. I have visited the plants of a good many of our competitors, both the licensed manufacturers and the independent manufacturers, and, I know generally that the manufacturing operations are about the same in all the plants I have visited. I think the Edison plant represented a very good development of the art. 4

Mr. GROSVENOR: What do you mean by the word "plant," what does that term embrace?

The Witness: By "plant" I would include the studio, and also, in the case of the Edison Company, the part of the factory that was devoted to printing and developing operations.

By Mr. CALDWELL:

Q. State what suits were brought by Mr. Edison or the

- 1 Edison Manufacturing Company on the patents owned by him pertaining to the motion picture art, at any time prior to January 1st, 1909. You may commence, if you will, with the original Letters Patent issued in 1897, was it not, covering the camera and film? A. Yes. When the original patent was granted in 1897, suit was commenced against the American Mutoscope & Biograph Company, now called the Biograph Company, and that suit was very vigorously prosecuted. It was brought on to final hearing before Judge Wheeler, and Judge Wheeler handed down an opinion sustaining the patent and holding it to be infringed,
- 2 both as to the claims on the camera and on the film. On appeal to the Circuit Court of Appeals the Court held that the claims were too broad; and therefore, the patent was reissued in two parts, one covering the camera, and the other, the film. Suits were also brought on the original patent, as I remember, against the Vitagraph Company of America, Eberhard Schneider, and, I think, Lubin, of Philadelphia. My recollection is that an injunction was secured under the original patent against the Vitagraph Company, and, I think also, against Eberhard Schneider.

- 3 Mr. GROSVENOR: Can you give any dates relating to the suits, for you are testifying very generally.
- Mr. CALDWELL: We will follow this up later with the specific dates.

The Witness. I am not able to give exact dates, Mr. Grosvenor. I know that the decisions of Judge Wheeler, and of the Circuit Court of Appeals, are printed in the Federal Reporter, but I do not remember the dates.

- 4 Mr. GROSVENOR: They have already been introduced in evidence.

The Witness: I didn't know that.

Mr. GROSVENOR: Can't you give the dates in respect to these other matters you have testified to, for

instance, these injunctions you have named in those suits? 1

The Witness: No, I am not able to, except that it was subsequent to the granting of the original patent and before the final granting of the reissued patent.

By Mr. CALDWELL:

Q. That would be then, approximately, between 1897 and 1902? A. Yes. After the first two reissued patents were granted, suits were again brought against the Biograph Company, and I think also against the Vitagraph Company, Lubin, Selig, Melies, and perhaps others. 2

Q. How about the Pathe Cinematograph Co., and J. A. Berst, or was there a suit brought against them? A. I don't recall that, but I think so. The suit against the Biograph Company on the camera patent was pressed as vigorously as possible, and that suit was brought on for final hearing before Judge Ray, who held that while the claims were valid, they were not infringed. On appeal to the Circuit Court of Appeals, the Court held that certain claims of the camera reissue patent were infringed by the so-called Warwick camera, used by the Biograph Company, and, I think, an injunction granted. Suit on the film reissue was started, and it developed that the defense of the Biograph Company would be that the reissue instead of having narrowed the claim or claims on the film, as was the intention, actually broadened the claims. This contention was based on the fact that the word "equidistant," which appeared in the original film patent claim, did not appear in the first reissue patent on the film. This was a clerical error, which was corrected by reissuing the film patent a second time; but it necessitated the dropping of the suits that had been brought on the first film reissue. My recollection is that these suits, however, were renewed against the Biograph Company and the other infringers on the second reissued film patent. 3 4

Q. You refer now to No. 12,192, the second reissued film

1 patent? A. Yes. What date did you want me to go up to?

Q. Up to the formation of the Motion Picture Patents Company? A. With this date in mind, I am certain that suit was brought on the second film reissue patent No. 12,192, against the Biograph Company, because that suit was being pressed in the Summer of 1908.

Mr. GROSVENOR: When was that suit brought?

2 The Witness: I don't remember, I don't recall that—I know we were taking testimony then.

By Mr. CALDWELL:

Q. Was it brought shortly after the second reissue? A. I think so; and a suit was also brought on this second camera patent in the Summer of 1908, against infringing theatres, principally in Chicago, but nothing became of this suit.

Mr. GROSVENOR: Those being brought in 1908?

3 The Witness: Yes, in the Summer of 1908, and nothing became of this suit, because, about that time it seemed reasonably certain that the differences between the two contending interests would be composed, as subsequently was the case, resulting in the formation of the Motion Picture Patents Company.

By Mr. CALDWELL:

4 Q. Have you stated the result of the second suit against the Biograph Company on the reissue letters patent affecting the camera? A. The result of that suit, as I recall, was the granting of an injunction, enjoining the Biograph Company from using the Warwick camera, which was a positive feed camera of the type now universally used, and which is known generally as the Edison camera. I might say, concerning this camera reissue patent, that a motion for a preliminary injunction was argued against the Selig Company in the Fall of 1907, and an injunction granted, or at least, we were in position to take an injunc-

tion, and I think an injunction was also granted against Lubin, in Philadelphia, on the camera reissue. 1

Q. Is it not a fact that Judge Kohlsaatt of the United States Circuit Court in Chicago, handed down an opinion directing the issuance of an injunction against Selig? A. That is so.

Q. Do you recall the date of that decision? A. I do not, except that was in the Fall or early Winter of 1907.

Q. Had proceedings for an accounting been commenced against the Biograph Company after the decision of the United States Circuit Court of Appeals early in 1907? A. Yes, these proceedings were being gone ahead with, and, as I remember, were in charge of Mr. Bull. 2

Q. Were they pending at the time of the settlement of the so-called warfare between the Edison and the Biograph interests? A. Yes.

Q. Do you recall what happened in the suit that you brought against Lubin under the second camera re-issue? A. Not specifically, except that as I remember it, we either had an injunction against Lubin or were in a position to take an injunction.

Mr. GROSVENOR: May I interrupt with a question? Mr. Caldwell, do I understand that you are going to submit a list or memorandum with dates respecting all this? 3

Mr. CALDWELL: We expect to do that, yes.

Mr. GROSVENOR: I suggest that before you examine the witness in these matters, that you have that list ready, so that he can refresh his recollection and we can proceed more intelligently.

Mr. CALDWELL: That is a question of the order of proof. I think that it would be convenient to have that list ready, but it does not happen to be ready at the present time. 4

Mr. GROSVENOR: I am afraid this testimony is going to be somewhat misleading if it is going to be given by these general conclusions and if the witness has not anything before him to refresh his recollection.

1

Mr. CALDWELL: I do not think so. I do not think the witness will be intentionally misleading.

By Mr. CALDWELL:

Q. Now, I think you have stated that suits were brought against Eberhard Schneider and the Vitagraph Company and Melies, Pathe Cinematograph Company and J. A. Berst. Do you know what happened in those suits? What the result of them was? A. Are you speaking now of the re-issue?

2

Q. The re-issue. A. Those suits were held up pending the determination of the Biograph suit, except as I have stated, the motion for preliminary injunction against Selig and possibly also, against Lubin.

Q. After the decision of the United States Court of Appeals, the second decision in the Biograph case, which, as you have stated, was followed by the decision of Judge Kohlsaas in Chicago, holding that the so-called Lumiere and Selig cameras were also infringements of the Edison camera, what happened?

3

Mr. GROSVENOR: I object to this testimony so far as it purports to give the conclusions or opinions of the Court, the proper evidence being those opinions; I further object to this last question as in my opinion, counsel is stating that the witness has testified to certain things, which it is my understanding he has not testified to thus far.

Mr. CALDWELL: The principal opinion to which I refer, you have already introduced in evidence. The opinion of Judge Kohlsaas is, however, not in evidence as yet. We will put it in.

4

By Mr. CALDWELL:

Q. What happened in the Fall of 1907, or Winter of 1907 and 1908, Mr. Dyer? A. With the successful termination of the litigation in favor of the Edison camera patent, which was held to cover all existing practical motion picture cameras—

Mr. GROSVENOR: I object to this as being merely

the statement of the conclusion of the witness as to what the decision did hold, and, therefore, as being improper. 1

The Witness: And since these cameras were being used by all the American manufacturers who had, during the Edison-Biograph litigation, developed their enterprises, they realized that their position was precarious—

Mr. GROSVENOR: I object to that as improper, stating what other people realized, and then giving the reason as in his judgment. 2

By Mr. CALDWELL:

Q. Is that the result of conversations that you had with the manufacturers, Mr. Dyer? A. Yes.

Mr. GROSVENOR: Then, call the manufacturers to testify as to the reasons that actuated them.

Mr. CALDWELL: I think it is competent for the witness to testify to general conditions prevailing at the time, as the result of which, certain action was taken. 3

Mr. GROSVENOR: He has not qualified to testify as to what motives may have actuated others. I want to enter my objection.

The Witness: Because all the American manufacturers realized that the Edison Company would be successful, as it was in the case of the Selig Company, in enjoining them from the use of their cameras, and, therefore, from making motion pictures in the United States, therefore, all the American manufacturers, with the exception of the Biograph Company, came to the Edison Company and received licenses under the Edison camera and film re-issues to permit them to lawfully carry on their business. These licenses were granted in the early part of 1908. 4

By Mr. CALDWELL:

Q. Why was the suit against the Biograph Company selected as the test suit in the case?

1

Mr. GROSVENOR: Test suit of what?

Mr. CALDWELL: On the camera.

Mr. GROSVENOR: Which suit are you referring to against the Biograph Company?

Mr. CALDWELL: I am referring to the second suit. The suit on the re-issue.

2

A. Well, in the first place, the Biograph Company already had been sued under the original patents, and we felt that it was up to us to test the re-issue patents in the second suit against them, and not give up in our efforts to enforce the rights of the Edison Company. Then, there was also more or less personal feeling between the two concerns, a feeling of bitterness, but principally as a matter of legal tactics, the suit against the Biograph Company was selected as the test case, because the Biograph Company was making use of two cameras, one known as the Biograph camera, and the other, the Warwick camera. There was some doubt as to the infringement of the Biograph camera, but we felt that we ought to proceed against both, and then, if we were successful, there would be no difficulty in getting preliminary injunctions against other infringers. Or, if we were successful only on the Warwick camera, as was actually the case, we still could get preliminary injunctions against other infringers. If, however, suit had been brought against any other infringers, while we would have been successful in securing an injunction, yet, if we then went against the Biograph Company, the question of the infringement of the Biograph camera would have to be gone all over again, and we considered that it was therefore better to proceed with the suit against the Biograph Company than against the others; in other words, it was the most unfavorable suit.

3

4

Q. Was the Biograph Company an active competitor of the Edison Manufacturing Company at that time? A. Yes.

Q. And its largest competitor among the domestic producers of motion pictures? A. It was.

Q. And did that fact have anything to do with your selection of that case as the test case? A. Yes. That was also a consideration.

Q. What were the considerations that led Mr. Edison to conclude to license these infringers under his patents instead of stopping them altogether? 1

Mr. GROSVENOR: I object to this question as being improper in asking as to the reasons that actuated a third person and not the person testifying. The proper way is to call the person respecting whom the question is asked.

Mr. CALDWELL: This witness at that time was the active representative of Mr. Edison, who conducted these operations. 2

Mr. GROSVENOR: He is qualified to testify as to the reasons that may have actuated himself in giving advice, but certainly he is not qualified to testify as to Mr. Edison.

By Mr. CALDWELL:

Q. These licenses were issued pursuant to instructions from Mr. Edison, were they not, Mr. Dyer? A. Yes. After being fully explained to him and having been approved by him. 3

Q. Now, I think, you may answer the question. A. What was the question?

The stenographer repeats the question as follows:

Q. What were the considerations that led Mr. Edison to conclude to license these infringers under his patents instead of stopping them altogether? A. Mr. Edison wanted to make as much money as possible out of his patents, and therefore, by these licenses— 4

Mr. CALDWELL: Before you proceed, Mr. Dyer— these patents at that time were owned by the Edison Manufacturing Company, were they not?

The Witness: Yes, sir.

1 By Mr. CALDWELL:

Q. That was a corporation, wasn't it? A. That was a corporation, owned practically by Mr. Edison.

Q. And you were the Vice-President of that corporation, were you not? A. I was.

Q. And practically charged with the executive management of that company? A. Not at that time. I was general counsel.

2 Q. You were Vice-President of the company? A. Not at that time. I was the Vice-President in July, 1908. At that time, I was the general counsel advising with Mr. Gilmore, who was the Vice-President.

Q. You may proceed. A. Mr. Edison—

3 Q. By Mr. Edison, you mean now the Edison Manufacturing Company, do you not? A. Yes. The Edison Manufacturing Company was practically Mr. Edison, because he owned all the stock, or substantially all the stock, of it—wanted to make as much money as possible out of his patents. He felt this could be done only by licensing concerns to use the patents upon the payment of royalties. It was also felt by the Edison Manufacturing
4 Company that the concerns that were in business and that were infringing, had probably entered the field without a proper knowledge of the patent situation, and that it would be harsh and oppressive to force them to retire. Furthermore, the Edison Manufacturing Company did not have the facilities to supply the market for motion picture films at that time, and if the company had pressed its advantage to its ultimate conclusion, it could not have supplied the motion pictures that it would drive out. These, I think, were the principal reasons why it was decided to license infringers instead of trying to close them up.

Q. Did those who were licensed comprise all of those engaged in business at that time, with two exceptions? A. Yes. All the manufacturers were licensed except the Biograph Company, and the only outsider was Mr. Kleine, who was an importer of films, and who allied himself with the Biograph interests.

Q. One of the witnesses called by the petitioner in this case, Mr. Swaab, has testified that in 1908, and prior thereto, the films were not sold as patented articles. Is that statement correct so far as the films sold by Mr. Edison or

the Edison Manufacturing Company are concerned? A. No, it is not correct. The Edison films were stated to be patented, and, I think, the date of the patent was printed as part of the main title of each film, so that the patent date would be thrown on the screen when the film was projected. I am quite sure also that the fact that the film was patented was extensively advertised by the Edison Manufacturing Company and also, that the fact that the film was patented was also marked on the boxes containing them. I think this information was disseminated as widely as possible by the Edison Company.

Q. State what part, if any, you took in bringing about the so-called Edison license arrangement in 1908? With what manufacturers you conferred, if any, before the license agreement was put in the form in which it was finally executed. A. The first knowledge I had specifically of any proposition to grant licenses was early in 1908. Mr. Alexander T. Moore, at that time manager of the Kinetograph department of the Edison Manufacturing Company, came into my office at Orange, and handed me a proposed license agreement between the Edison Company and Pathe Freres, and asked me to look it over and advise him if it was correct in form. I took up this agreement with Mr. Gilmore, who at that time was Vice-President of the Edison Company, and thereafter the license agreement was developed by Mr. Gilmore and myself. I do not recall what the exact form of the first agreement was that Mr. Moore submitted to me, or what suggestions in the final agreement were made by Mr. Gilmore, or what by myself. We wanted to get an agreement that would be acceptable to Pathe Freres, because that concern was a dominating factor in the motion picture business at that time.

Q. Commercially, you mean? A. Commercially. And we felt that the contract that would be accepted by Pathe Freres would be acceptable to the other proposed licensees. This work took place in the early part of 1908, and the agreements were executed, as I remember, in the Spring of that year. The only manufacturer that I recall talking with at the time when the form of the contract was being discussed, was Mr. Berst. I think I also saw some of the manufacturers at the time the agreements were executed by them, but I do not recall anyone specifically, except Mr.

- 1 Spoor, who I remember very well coming down to New York for the purpose of executing his license agreement.

Q. You have stated that these agreements were executed in the Spring of 1908. I want to call your attention to the date of the agreement between the Edison Manufacturing Company and the Kalem Company, which is attached to the answer of the Edison Company in this case, and which is in evidence as Petitioner's Exhibit No. 92, and I ask you to look at that date and see if that refreshes your memory as to the time when these license agreements were executed?

- 2 A. Yes. In referring to the Spring, I had in mind, possibly the 1st of February.

Q. What was the date of that agreement? A. The date of this agreement is the 31st of January, 1908.

- Q. That is about the time when the other agreements were executed, was it? A. I think that is true of all the agreements, except in the case of Pathe, and there was delay in executing the Pathe agreement, as I remember it, owing to the fact that Mr. Berst stated that the actual execution of the agreement had to be first referred to his principals in Paris. He stated he had not any doubt that they would approve it, but he had to get their formal consent first, as I remember it.

3 Q. But in point of fact, did not Pathe Freres commence to operate under the agreement at the same time as the other licensees? A. He did.

- Q. All of these agreements were substantially uniform, were they not, in terms? All alike, with two exceptions? A. Yes, sir. They were all alike, except that in the case of the Pathe Company and in the Melies agreement, there was either a separate agreement, or else the main agreement was modified to provide that those concerns should be given the right to import foreign negatives from which positive prints could be made, and also to import, under certain conditions, foreign made positives. Those two concerns were the only ones of the licensees who had foreign affiliations. Other licensees were not importing negatives, and therefore, it was not necessary that their licenses should include this privilege.

4 Q. Why were all of these agreements made uniform in character? A. As a matter of business fairness, we felt that all the licensees should be treated alike. It was also more convenient to use the common form.

Q. When you took up with the exchanges under the Edison regime, the matter of contracts, were uniform contracts made with each exchange? A. Yes, sir. 1

Q. Why did you consider that that was necessary? A. Because it would have been an endless task to have negotiated separate agreements with a large number of exchanges. It was much more convenient and much more fair to treat them all alike.

Q. It is in evidence that there was a conference or convention of motion picture men, principally exchange men, in the City of Buffalo, early in 1908. Were you present at that conference or convention? A. I was. I went there with Mr. Gilmore. 2

Q. Will you state what transpired there, so far as you know? A. That was a convention of a large number of exchanges. I think most of the exchange men of the country were there; certainly the most important exchange men were there. It was a meeting, as I recall, of a body known as the Film Service Association. At that meeting I addressed the members of the Association and explained to them that the Edison camera patent had been sustained in our suit against the Biograph Company, and that all the American manufacturers except the Biograph Company had decided to recognize the Edison patents, take licenses under them, and pay royalties to the Edison Company, and that those licenses were subject to certain reasonable conditions. I stated that up to that time the exchanges, in handling film that had not been licensed under the Edison patents, had infringed those patents just as effectively as if they had made the film themselves, and that it was the purpose of the Edison Company to license exchanges under the Edison patents, so that they could handle licensed films legitimately and without danger of infringement. And at that time I read or explained the provisions of the proposed exchange license to the several exchanges, so that they would understand it. I also had several of the exchange men come up to me afterwards and ask questions about the proposed exchange license, and I endeavored to make it clear to them what it was designed to cover. 3 4

Q. Was any objection made, so far as you recall, as to the terms of the exchange license? A. No. The exchange men seemed to be very hopeful that, as a result of the cessation of the warfare between the conflicting interests and

1 the licensing of the industry, that conditions would improve, so far as their business was concerned. I think that they generally approved the exchange license, and I do not recall that any of them objected to it.

Q. Did any of them express any fear that the exchange business, if conducted under the conditions that had been prevailing theretofore would not last long? A. That feeling seemed to be in the atmosphere.

2 Q. Do you recall, Mr. Dyer, a provision in the license exchange agreement between the Motion Picture Patents Company and the exchange, by which the exchange is obligated to lease a minimum of twenty-five hundred dollars' worth of film per month? Do you know what the origin of that provision was? A. Yes, I think the origin of that provision was one of the rules of the Film Service Association that the exchanges had imposed upon themselves, providing that no exchange should be a member of the Association unless it purchased twelve hundred dollars' worth of film per month.

3 Q. I call your attention to Defendants' Exhibit No. 2, page 507 of the record, which is Article II of the by-laws of the Film Service Association, and ask you to read Sections 2 and 3 of those by-laws, and see if that is what you are referring to as the self-imposed condition by the exchange men.

Mr. GROSVENOR: I object to all this as immaterial.

A. Yes, sir. The two sections read as follows:

4 "Section 2. For the purpose of membership in this Association a 'legitimate film-renting business' shall be one equipped to do a self-sustaining film-renting business independent of any other office or concern, that purchases new film for renting purposes to the average amount of at least \$1,200 per month.

"Section 3. Any eligible individual, partnership or corporation desiring to become a member of this Association shall sign a written application for membership, stating the name and office address of the applicant, the names of the partners, the names of the officers or directors, if a corporation, and the

name of the person who will represent the membership in the Association in the case of a partnership or corporation, that in how many, if any, moving picture shows the applicant is interested, either directly or indirectly, and the names under which they are operated, and whether the applicant will, if elected to membership, give a pledge not to rent film to any person or persons whom the applicant knows to be re-renting it."

This is the basis of my previous answer.

By Mr. CALDWELL:

Q. After the formation of the Patents Company, the minimum requirement was changed from \$1,200 to \$2,500, was it not? A. Yes, sir.

Q. Can you assign any reason why the minimum was increased under the Patents Company licensing arrangement? A. My recollection is that this increase was made at the suggestion and request of the exchange men themselves, who represented to us that at that time the exchange that did a smaller business than \$2,500 per month in the purchase of films, would not be self-sustaining, and therefore, would be open to the temptation of objectionable practices, particularly duping, which was a common practice at that time. I know that there were at least three good sized duping plants in Chicago, Philadelphia and San Francisco, that I was informed were doing a prosperous business. Duping was a great vice.

Q. Could an exchange satisfactorily serve its customers if it took less than that amount of film per month? A. I do not think so.

Q. Did the Edison Manufacturing Company, or, as far as you know, any other manufacturer, have anything to do with the preparation of the by-laws of the Film Service Association? A. No, sir.

Q. Was the Edison Company a member of the Film Service Association? A. No, sir.

Q. Do you know whether any of the other manufacturers were members? A. I don't know personally, but there were some manufacturers, namely, the Vitagraph Company, Lubin, and Spoor, who were interested in the

1 exchange business, and it is probable that those manufacturers or individuals connected with them, were members of the Association. I am quite sure that Mr. Rock was a member of the Association, representing the Vitagraph Company. I would like to say, however, that the Vitagraph Company of America, which is essentially a producing concern, was different from the American Vitagraph Company, which was the exchange concern. They were two corporations, but the trade frequently confused them.

2 Mr. GROSVENOR: They were owned by the same people?

The Witness: By practically the same people, yes, sir.

By Mr. CALDWELL:

Q. Mr. Swanson, a witness called on behalf of the Government, has testified that all of the manufacturers were members. That statement is inaccurate? A. Absolutely.

3 Q. I show you Petitioner's Exhibit No. 92, introduced in evidence on page 356 of the record, but not copied in the record, but identified as the exhibit attached to the answer of Thomas A. Edison, Incorporated, and the same being the license agreement between the Edison Manufacturing Company and the Kalem Company, dated January 31st, 1908. Do you identify that as one of several similar agreements executed between the Edison Manufacturing Company on the one side, and certain other persons as licensees? A. Yes, sir.

4 Q. With what other persons were similar agreements entered into at or about that time? A. S. Lubin of Philadelphia, later known as the Lubin Manufacturing Company; the Essanay Company of Chicago, Selig Polyscope Company of Chicago, Pathe Freres, the Vitagraph Company, and George and Gaston Melies. In the case of the Pathe and Melies licenses, they were the same, except that they provided, as I have before explained, for the importation of foreign negatives and the printing of positives in this country, but whether this change was in the agreement itself or the subject of a supplemental agreement, I do not now recall.

Q. At the time these agreements were entered into, the Edison Manufacturing Company, the licensor, was itself actively engaged in the production of motion pictures, was it not? A. Yes, it was one of the largest producers.

Q. And was it in active competition with these seven persons and corporations that you have just named? A. Yes, sir. Did I name seven? Did I have all of them?

Q. I think you have named seven. And after the execution of these agreements, it continued in the business of manufacturing motion pictures, did it not? A. Oh, yes.

Q. And in active competition with the seven licensees? A. Yes, it was in active competition and developing all the time.

Q. So that at the time these agreements were executed, the Edison Company sustained a dual relation, did it not, to the subject matter of these agreements? A. Yes.

Q. What was that relation? A. The Edison Company, in the first place, was the owner of the dominating patents and occupied the position of the licensor with respect to the several licensees, and also was a manufacturer or producer of motion pictures, and therefore occupied the relation of competitor with its own licensees.

Q. Did all of these agreements subject the licensor, that is to say, the Edison Manufacturing Company, to the same terms and conditions as the licensees? A. All except the payment of royalties.

Q. The value of a license to manufacture and sell under a patent depends, in a large measure, does it not, on the exclusiveness of the rights that are conferred, or, in other words, the number of licenses to be issued under the patent? A. I think so. I think that is the general experience of patentees.

Q. In negotiating the terms and conditions of these licenses with the various persons who subsequently became licensees, do you know what, if anything, was said by any of them as to the number of licenses that were to be issued?

Mr. GROSVENOR: Are you talking about the rental exchange licenses or the manufacturers' licenses?

Mr. CALDWELL: I am speaking of the manufacturers' licenses.

Mr. GROSVENOR: And this was prior to the for-

- 1 mation of the Patents Company, and related to the period of the Edison licensees, so far?

Mr. CALDWELL: Exactly.

The Witness: Yes, sir; the idea was to confine the licenses to those producers of motion pictures who were then in business, or at least those whom we knew of, and not to extend the number as new concerns entered the business, unless the licensees agreed to it, or a majority of the licensees.

- 2 Q. Do you know whether a license was offered to the Biograph Company and to George Kleine at that time? A. Yes, sir, we offered a license to the Biograph Company, but they refused to be licensed.

Q. Then the disposition of the Edison Company at that time was to license the entire art as it was then known, or as it then existed? A. That is what we planned to do.

Q. But you could not agree with the Biograph Company and George Kleine as to the amount of royalty to be paid, is that correct? A. That is the reason why they did not accept the licenses from the Edison Company.

- 3 Q. Do you know whether or not any of the persons or corporations who entered into these license agreements with the Edison Company, contemplated at the time making additional investments in their business after obtaining licenses?

Mr. GROSVENOR: I object to that as immaterial.

- 4 A. Yes. I recall very well that after the licenses were finally executed and the strain and stress was over, that several of the licensees, notably the Vitagraph Company, Mr. Lubin, Mr. Selig, and Mr. Spoor, told me that they now felt that they were in position to go ahead with safety and invest capital in their business, so as to develop and greatly improve the character and tone of their pictures. The impression I got from them was that they had not made any more investments than were absolutely necessary, because of the fear they had of losing their investment as the result of patent suits.

Q. I call your attention to the provision contained in Paragraph 20 of the exhibit which I have already shown

you. You may state what provision there was in that paragraph as to the number of licenses which might be issued under the patents and under what conditions additional licenses might be issued. A. The paragraph in question which appeared in all the other license agreements, provides that in addition to the license of the Edison Company and Kalem Company, six other similar licenses might be granted, making a total of eight. 1

Q. A total of eight licenses, or a total of eight manufacturers under the license, including the licensor? A. Making a total of seven licensees, and one licensor. The agreement provides that additional licenses might be granted by a plurality vote of the licensor and licensees, based on the running feet of new subjects issued by the licensor and licensees during the year preceding the taking of the vote. The paragraph also provides that in case of the termination of any license, the licensor should have a right to appoint a new licensee in place of the one that was ended. 2

Q. Why were the licensees granted a voice in determining whether or not additional licenses might be granted?

Mr. GROSVENOR: This questioning refers not to the Patents Company licenses, then? 3

The Witness: No. These were the Edison licenses. By the grant of these several licenses, the patent property or territory was divided practically into eight parts, each manufacturer having one-eighth. Just exactly the same as in the case of an exclusive license, the one licensee has the whole. Therefore, to grant an additional license or licenses, would reduce the interest of each licensee. The licensees agreed to pay substantial royalties under the patents, based upon a certain understanding, namely, that the number of licenses should be limited, and it seemed entirely reasonable to me at the time and does so now, that they should have a right to decide whether additional licenses should be granted. I doubt very much if they would have consented to pay the royalties they did if they had felt that the Edison Company could indiscriminately license anyone who might appear in the field. 4

1 Q. Was there much discussion or controversy over the question as to the amount of royalty to be paid between the Edison Company and the licensees, prior to the agreement? A. Oh, yes.

Q. Before they arrived at an agreement? A. Oh, yes, that was the result of considerable dickering back and forth. We were trying to get as much as we could, and the licensees were trying to pay as little as they could. That always happens with license agreements.

2 Q. I call your attention to the following provision contained in Paragraph 4 of that license agreement, namely: That the licensor and licensee "will use exclusively sensitized film approximately $1\frac{3}{8}$ of an inch or 35 millimeters in width, or narrower, manufactured and sold in the United States under authority from the licensor, hereafter called 'licensed film,' and that they will not purchase or otherwise acquire or sell or otherwise dispose of or deal in motion pictures produced on or by the use of any other film than such 'licensed film,' nor sell or otherwise dispose of any negative motion pictures." What was the purpose of limiting the licensees to the use of film $1\frac{3}{8}$ inches or narrower? A. That was the standard width of motion picture film, namely, 35 millimeters, and we were dealing with the practical existing conditions at the time. The provision regarding the use of narrower film was put in the licenses because several of the licensees were discussing the possibility of putting out a small household machine, and we wanted the license to include the handling of film for this purpose. The Pathe Company and the Edison Company as a matter of fact did, at a later date, put out machines of that type, using film of a less width than 35 millimeters.

3 Q. It was never intended or contemplated, however, that the so-called household machine should ever give exhibitions for profit, was it? A. No. The household machine was simply a refined form of toy. It was to be used only in the homes. Something like a phonograph.

The Examiner: The hearing is adjourned until 2:30 o'clock this afternoon at the same place.

NEW YORK CITY, November 10th, 1913. 1

The hearings were resumed, pursuant to adjournment, at 2:30 o'clock P. M., November 10th, 1913, at Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. Mr. Dyer, you have stated that the Edison films were sold as patented articles both prior and subsequent to the Edison licensing arrangement in 1908. I show you a blue label with the following printed on the back of it: "Edison Clear Projecting Film. Subject." Followed by some blank lines on which to place the title of the picture. "Length.... Feet," which is followed by this printing: "This film is made and sold under the Edison Patent No. 589,168, dated August 31, 1907. Imitation or duplication thereof will be prosecuted. Manufactured by Edison Mfg. Co., Orange, N. J., U. S. A.," and I ask you if that is one of the labels that was in common use in the sale of the Edison film prior to the time of the re-issue of the film patent? A. Yes. I recall seeing film boxes containing this label at or about the time I moved down to Orange, in April, 1903—possibly it was before that time, because I spent a good deal of my time at the Edison Laboratory from the year 1898 to the year 1903. 2 3

Mr. CALDWELL: I offer it in evidence.

Mr. GROSVENOR: I want to ask one or two questions before I decide whether I will make objection. This small round disk names only Edison Patent No. 589,168, dated August 31, 1897. Then, I suppose, this label was used before the decision of Judge Wallace on that patent, which I have named, and before the reissue, for the reason that no reissues are named on this label? 4

The Witness: It was used apparently before the reissue, and after the date of the patent. The patent mentioned on the label is the original patent.

1 Mr. GROSVENOR: Yes, but it does not state the numbers of the reissues, or refer to the reissues, therefore it is to be presumed the label was used during a period antedating the issue of the reissues?

The Witness: That is correct.

Mr. CALDWELL: That was my question.

The label offered is received in evidence and marked "Defendants' Exhibit No. 105."

2 **Defendants' Exhibit No. 105.**

EDISON CLEAR PROJECTING FILM.

Subject

.....

Length.....Feet.

This Film is made and sold under the Edison patent
No. 589,168, dated August 31, 1897.

3 Imitation or duplication thereof
will be prosecuted.

Manufactured by

EDISON MFG. CO.,

Orange, N. J.,

U. S. A.

(Large capital "A" in brown ink in center.)

4 By Mr. CALDWELL:

Q. I show you another label with red printed matter on the back, reading as follows: "Trade Mark. Thomas A. Edison. Patented August 31, 1897. Reissued Sept. 30, 1902. Reissued Jan. 12, 1904. No....Length....Feet. Title," with a space for the title of the subject, followed by this printed matter: "Notice. This film is sold subject to the restriction that it shall not be used for duplicating, or printing other films from it. Any use of it for such purposes is an in-

fringement of the above patents under which it is made and sold. Manufactured by Edison Mfg. Co., Orange, N. J., U. S. A.," and I ask you if that is a form of label that was used on all motion pictures sold by the Edison Manufacturing Company subsequent to the dates of the reissued letters patent referred to on the face of it, and up to the time of the Edison licensing arrangement in January, 1908? A. Yes; as I recall, this is a label that was being used in connection with what was called "Class A Film." 1

Mr. CALDWELL: We offer that label in evidence.

The label offered is received in evidence and marked "Defendants' Exhibit No. 106." 2

Defendants' Exhibit No. 106.

Trade Mark

THOMAS A. EDISON

Patented August 31, 1897.

Reissued Sept. 30, 1902. Reissued Jan. 12, 1904.

No.....Length.....Ft. 3

Title.....

.....

NOTICE

This film is sold subject to the restriction that it shall not be used for duplicating or printing other films from it.

Any use of it for such purposes is an infringement of the above patents under which it is made and sold.

Manufactured by 4

EDISON MFG. CO.,

Orange, N. J.,

U. S. A.

(Large red capital "A" printed in center.)

1 By Mr. CALDWELL:

Q. Refer again, Mr. Dyer, to Petitioner's Exhibit No. 92, dated January 31, 1908, and to the provision contained in paragraph 4, which provided that licensees should get their raw stock from the manufacturer named by the licensor. What was the purpose of confining the licensee to the use of raw film manufactured and sold in the United States by a person or persons authorized by the licensor? A. The purpose of this particular provision is this: The Edison Company, as I have stated, in addition to being the owner of the patents, and the licensor, was also the producer of moving pictures, and, therefore, a competitor of the licensees. The licensees were very jealous, apparently, of their business, and objected to the Edison Company, as a competitor, knowing how much business they were doing. Therefore, the provision was made that the royalties should be collected by the licensed manufacturer of raw film from the several licensees, and turned over to the Edison Company in bulk, without divulging the amount that might be contributed by any individual licensee. Furthermore, the Eastman Kodak Company, that was designated as the licensed raw film manufacturer, was the manufacturer of the best film available, and we desired to have licensed pictures put out on the best possible film so as to gradually improve the condition of the business. The principal reason, however, was to devise a scheme by which the royalties could be collected without divulging the amount contributed by each licensee.

Q. Did the Edison Company as the owner of the patents have any special interest in the selection of a high grade of raw stock? Did it have a separate interest there as distinguished from its interest as a manufacturer, and as the owner of the patents? A. Naturally that is so, because our idea was to try to develop the business on a high plane so that it would be prosperous, and become larger, and so that the royalties would therefore be greater.

Q. What was the purpose of the prohibition contained in that license agreement against the sale of negative motion pictures? A. Is that in the same paragraph?

Q. I think it is. Would the fact that the royalty was based both on the amount of the film used in the negatives, as well as in positives, have any relation to that prohibition? A. I think that is so. As I recall, the purpose of this pro-

hibition was to prevent a licensee, who had legally manufactured a negative under the license, from disposing of that negative to some one on the outside who might produce positive prints therefrom without paying a royalty. We considered it desirable in granting licenses to tie the camera and film patents together, and prevent any possibility of the licensees in any way rendering support to any outside infringers. 1

Mr. GROSVENOR: In using that term "film patent" in the sentence just read, are you referring to the patent Eastman had? 2

The Witness: No, I am referring to the Edison reissue film patent.

By Mr. CALDWELL:

Q. Is that all you wanted to say on that subject? A. Do you wish me to elaborate?

Q. No, I simply wanted to know whether you had finished your answer? A. Yes.

Q. I call your attention to the following provision in the same paragraph of this agreement: "The Licensor covenants and agrees, upon the execution of this agreement, to furnish the licensee with the name or names of the manufacturer, or manufacturers of such 'Licensed Film' from whom the Licensor and Licensee shall purchase the same, and the Licensor agrees also to keep the Licensee promptly informed hereafter, from time to time, of the name or names of any other or additional manufacturer or manufacturers authorized by the Licensor to make such 'Licensed Film' and from whom the same may be purchased." 3

Q. What name or names of manufacturers of raw film did the licensor give to the licensees after the execution of this agreement? A. The Eastman Kodak Company. 4

Q. Why was the Eastman Kodak Company selected? A. It was known that the Eastman Kodak Company would be selected because all the licensees were dealing with that company and getting film from it. The Eastman Company made the highest type of film then known, so that the quality of the pictures would thereby be assured, and, at the same time, the Eastman Kodak Company was a large and respon-

1 sible concern, and every one, both the licensor and the licensees, felt confident that the confidence required by the license would be observed by the Eastman Company. The Eastman Company, of course, was not specially referred to in the license because we did not know what the future would develop, and every one felt, of course, that if a new film should appear that was superior to the Eastman film, that such film ought to be placed at the disposal of the licensees.

Q. Was the Edison Company in any way interested other than as you have already stated in the Eastman Kodak Company? A. Not at all.

2 Q. Was it the intent of the agreement to give the Eastman Kodak Company a monopoly of supplying raw stock? A. No.

Q. Now, I call your attention to another provision contained in the third clause of paragraph 4 of that agreement, to the effect that the licensor will exact from each manufacturer of raw film authorized by it to furnish or sell such film to the licensees, an agreement in writing not to furnish such motion picture film to anyone but the licensor and its licensees—do you find that there? A. Well, it is a little different—

3 Q. (interrupting) I am not pretending to quote the exact language. A. Yes—

Q. —Except to the extent of $2\frac{1}{2}$ per cent of the total amount of licensed film of the width of $1\frac{3}{8}$ inches, or narrower, supplied by such manufacturer to the licensor and said licensees during any one year, which amount the manufacturer was authorized to sell to persons not engaged in the motion picture business, with the further exception that the manufacturer might reserve the right to manufacture and sell sensitized films suitable for commercial production of negative and positive motion pictures of a width not to exceed approximately three-quarters of an inch to persons engaged in the motion picture business. What was the purpose of prohibiting the manufacturer from selling film of the standard width to persons other than the licensees? A. Any licensed film that might be sold in this country by a licensed manufacturer of raw film for moving picture work would necessarily be used in an infringing camera, and the manufacturer would therefore be contributing to the infringement. The purpose of the condition was to minimize

as much as possible infringements of the Edison patents. In a sense it amounted to a license to the raw film manufacturer under the Edison patents, or, in other words, a license against contributory infringement. My recollection is that this particular provision later on was modified, or, at least, was not observed by the Eastman Company.

Q. In negotiating your contract with the Eastman Company was it pointed out, do you know, to the Eastman Company that if they sold this raw film to any persons other than the Edison licensees the Eastman Company itself would be a contributory infringer of the patents of the Edison Company?

Mr. GROSVENOR: Objected to as hearsay.

The Witness: Yes, that point was fully explained to the Eastman Company.

By Mr. CALDWELL:

Q. You have stated that one of the purposes was to minimize or lessen the danger of infringement. To what extent, if any, do you think it had that result in actual operation? A. I am not able to say, but I think during the time the condition was observed it reduced infringements to some extent.

Q. Did you state why the exception was made in this restriction to the extent of two and one-half per cent. of the raw film sold by the Eastman Company? A. Yes, I remember that this point was brought up by Mr. Eastman when we were discussing with him the advisability of this condition. He stated that to his knowledge there were a number of people in the United States who were taking up the moving picture work, more or less in an amateur way, for the purpose of taking pictures of subjects of natural history, etc., and he mentioned a friend of his in the Yellowstone Park, who was making moving picture records showing the habits of wild animals. He stated he thought it would be for the public good to allow this work to go on even if it was an infringement; and therefore, this exception was made, leaving it to the Edison Company to stop those infringements if it saw fit to do so.

Q. Why was the manufacturer of sensitized film left

1 free to sell film three-fourths of an inch in width or less to
persons engaged in the motion picture business other than
the licensor or licensee? A. That had to do with the pro-
posed household or toy machines which it was thought
might be made, and all of which would use film of the
narrower width. We were dealing in these agreements
with the standard film that had developed in the art, and
could not very well tell what the development would be in
other lines.

2 Q. I call your attention to the covenant contained in
Paragraph 5, not to "sell, or otherwise dispose of, or
offer for sale in the territory aforesaid, unexposed posi-
tive or negative licensed film during the continuance of
this agreement." What was the purpose of this provision?
A. The purpose of that condition was to prevent li-
censees from securing the film and selling it to an in-
fringer. I do not think there was any objection to one
licensee selling film to another licensee, which apparently
would be covered by the condition, although that might
have been something that we objected to.

3 Q. Explain what is meant by the use of "blank film"
for "leaders," or "spacing," as the term is used in this
paragraph? A. At the front of each picture is placed
a section of blank or colored or tinted film, to take up
the wear which is greatest at the end. A similar piece of
blank film is used at the finish of the picture and it is
called a "tail-piece." Ordinarily when two or more pictures
are combined in a single reel they are separated by a few
feet of blank film. Of course, any tough, flexible, perforated
material, such as paper or cloth, might be used for these
purposes, but there is a great deal of waste in connection
with the production of these pictures, both at the studios,
4 and in connection with the manufacturing operations, so
that there is always a supply of blank film for these pur-
poses.

Q. What was the purpose of the prohibition against the
sale of second-hand positive or negative motion pictures,
or motion pictures which have become used, or shopworn,
or in any way damaged? A. The purpose of that condi-
tion was to minimize the extent to which old worn out ob-
jectionable pictures might appear in the art. It was along
the same lines as the condition requiring the return of

film after a certain period of use. We felt that it would be just as objectionable to permit the licensee to sell old and worn out film as it would be to permit the exchanges to retain old and worn out film for use in service. It would be difficult to place an exact point at which a second-hand picture might be objectionable, or not, so that the provision prohibited all second-hand pictures from being sold by the licensees. 1

Q. At the time of this licensing agreement in January, 1908, was the use of old and worn out film quite common in the business? A. Yes, they were very common. The moving picture art had developed so rapidly that the demand was greater than the supply, so that the pictures were subjected to terrific use, and many of them were very old and worn. These were called in the art "rainstorms," which were quite common. Pictures of this sort were used generally in vaudeville houses as chasers to drive out audiences, and allow new people to come in. We felt sure that pictures of this sort would simply do harm to the business, and we had reason to believe that they were actually harmful to the eye. As a result of the conditions of this license agreement and subsequent license agreements relating to the return of old and worn out film, and prohibiting the sale of second-hand film, the condition of the motion picture art has been very greatly improved, and I doubt if any motion picture theatre now would put up for a moment with the objectionable films that were quite common in the art at the time the agreement was made. 2 3

Q. What is the meaning of the term "non-licensed motion pictures," as it is used in that agreement? A. A non-licensed motion picture is one produced or imported by anyone not licensed under the Edison patents.

Q. Now, I want to call your attention to Paragraph 6 of that agreement, which reads in parts as follows: "The licensor and licensee further mutually covenant and agree not to loan, rent out, sell, or offer for sale or otherwise dispose of in the territory aforesaid, motion pictures to anyone purchasing or otherwise obtaining, using, loaning, renting or selling, or offering for sale or otherwise disposing of or dealing in non-licensed motion pictures." What was the purpose to be subserved in prohibiting licensees from selling to persons dealing in non-licensed motion pic- 4

1 tures? A. The purpose was to keep the licensees from giving aid, comfort and support to infringers. We felt that if the licensees could supply film to infringers, they would thereby support infringers and give them better opportunity to carry on and extend their infringing operations.

Q. When you say, "we felt," you mean that the licensor felt? A. The Edison Company.

Q. Do you think that the agreement produced that result in whole or in part in its practical operation? A. I do. I think it reduced infringement.

2 Q. It was a provision at least tending to secure the patent owner in the exclusive enjoyment of his rights under the patent, is that right? A. That was the purpose of it.

Q. Referring now to Paragraph 9 of this agreement, which establishes a schedule of minimum prices, will you please state the reasons which actuated the licensor and licensees in fixing a minimum schedule?

3 Mr. GROSVENOR: It is understood, I take it, that the objections heretofore made will apply to all this line of testimony, that these questions are all immaterial—

Mr. CALDWELL: I have not heard that objection before.

4 Mr. GROSVENOR: I will state again, then, in order that there may be no question, that I object to all this line of testimony as to reasons or motives that may have actuated any of these people in doing any of the acts, on the ground that these are immaterial. The motives are immaterial—whether the witness is asked to testify in regard to the motives that actuated them in making the agreements of January, 1908, or in regard to the motives which actuated them in making subsequent agreements, or any of the agreements in this case.

Mr. CALDWELL: In answer to that I will say that we are charged in the petition with having executed these various agreements with the motive of suppressing competition, and restricting competition, and establishing a monopoly. If the purpose which actuated the defendant in entering into these agreements is material as charged in the petition, it is clearly com-

petent for us to bring out the real motive which did actuate them. 1

Mr. GROSVENOR: That question has not yet arisen, because all the testimony today, and all the questions so far addressed to the witness, relate to the agreements of January, 1908, which, as I recall the petition, are not even referred to in the petition; therefore my objection so far made is not contrary to anything set out in the petition regarding the purposes.

Mr. CALDWELL: The agreements of January, 1908, were the forerunners of the agreements of December, 1908, and I propose to connect the two in such a way as to make this testimony entirely admissible. 2

By Mr. CALDWELL:

Q. Will you answer the question? A. There were several reasons why a minimum price was established. We felt that the motion picture art had great possibilities. In the early days, up practically to the time of the granting of these licenses, and even to a large extent at that time, most of the films used were exhibited largely because of their novelty. Some of these films simply showed little incidents and scenes, such as Niagara Falls, the American flag, the Empire State Express, waves washing the shore, and so forth. Some films had been made that were more or less dramatic, like the "Great Train Robbery" of the Edison Company, and a picture called "Personal" by the Biograph Company. Those were probably the two best known pictures ever made up to that time. We felt that the art could progress along the lines of the drama, removing the motion picture from its field merely as an ephemeral novelty, to a standard form of amusement, and we believed that the competition between the producers should therefore extend along the line of quality of production, and not on price. So that a producer of these pictures, knowing what he could get per foot, would be able to put the greatest possible value in each foot of subject. The art has progressed since the granting of these licenses to a very remarkable extent, and is now no longer merely a novel form of entertainment that appeals to people because of its novelty, but is an assured and established form of amusement, its popularity being probably greater than any 3 4

1 other form of amusement in the world. In addition, a very
important reason for providing for a minimum schedule,
as I recall, was the fact that the Edison Company occupied
the dual relation of licensor and competitor, and it was felt,
and the fear was expressed by the licensees, that if the Edi-
son Company should receive a large income annually in the
form of royalties, they would be placed at an unfair advan-
2 tage in competing with the licensees. Therefore a minimum
price was fixed, which was designed to represent a fair aver-
age of prices then current, so that any such unfairness on
the part of the Edison Company, should it choose to take ad-
vantage of its position, might be checked. I do not recall
any others. I may think of something later.

Q. Did the establishment of that minimum schedule have
any effect on the price of admission paid to motion pictures?
Did it raise the price of admission to motion pictures in any
way? A. No, not at all. The usual price of admission then,
and at the present time, is five cents. In some localities the
price is ten cents or more where the theatres are very large,
or where the program is so long that the audience cannot be
changed often, but the price at that time and now, or at least
3 the usual price, is the minimum American standard of five
cents, and that price could not be reduced, no matter how
much cheaper the pictures might be made, any more than
could the price of soda water or beer be reduced if the cost of
production is lessened.

Q. Was it believed by the licensor that the royalty which
it was to receive would ultimately be greater if a minimum
schedule were established, than it would be if no restriction
were placed upon the licensees as to prices? A. Yes, it was
felt that unless this and other conditions were imposed that
tended to promote the eventual development of the business,
4 the royalty would be less than if there were no conditions.
We felt that—I said “we;” I mean the Edison Company—
that by trying to do everything that we could within the
territory of our patents to elevate the business and make it
a more popular form of entertainment, that by doing so we
would conduce to the success and prosperity of the licensees
and consequently increase the amount of our royalties.

Q. This minimum schedule was binding upon the Edison
Company, the licensor, as much as on the licensees, was it
not? A. It was. The Edison Company was bound, so far as

its position as a producer of motion pictures is concerned, to all the conditions and stipulations of the license agreements, except the payment of the royalty. 1

Q. Was each manufacturer left free to charge what he pleased for his product, so long as it was not below the minimum schedule? A. Yes, sir.

Q. Was there any agreement or understanding between the manufacturers on that question, outside of the written agreements? A. No, sir.

Q. I think you have stated that the minimum price fixed in this schedule fairly represented the average of the price prevailing at the time the agreement was made. Is that correct? A. That is as I recall it, yes, sir. Some of the producers were selling at a lower price and others above this, but I think this was a fair average. 2

Q. Why did this paragraph of the agreement provide that a new minimum scale of prices might be adopted by a plurality vote of the licensor and licensees, based upon the output, 1,000 feet of new subjects, placed on sale in the territory covered by the agreement? A. No one would be able to say that a fair, reasonable price established at the time of these agreements might be fair and reasonable under different conditions. We felt the conditions might change, as, for example, substantial reductions in the price of raw material, which would permit a lower price in the finished picture, or increase in the investment, or increase in the salaries of actors, or increase in the character of the pictures required by the public, that would necessitate an advance of the minimum price. Therefore, since the minimum price could not be fixed immutably for all time, it was recognized that it should be subject to change when conditions required it. The licensees being competitors of the Edison Company, would not permit the Edison Company arbitrarily to change the price, because the Edison Company had a clear advantage of two or three hundred thousand dollars annually in royalties, which would enable them to fix a price that would be unfair to the licensees. It was felt therefore that the licensees should participate in the consideration of a change in price, and it was felt that the vote representing the relative size of the several licensees would be a fair way to determine that question. When I say relative size, I do not mean that the relative size of the licensees would be the same at all 3 4

1 times as was the case when the license was issued, because the particular manner of taking the vote was of such a character that under competitive conditions, the licensees might grow or be reduced in size, and their vote would correspondingly be changed. The idea was to provide a voting scheme that would take into account changes in the size of the manufacturers under the stress of competition.

Q. And those changes in size actually did take place, did they not? A. They did, in a very interesting way. For instance, when the Edison licensees were first formed, the Kalem Company had just been started, and it was such a small factor in the business, that we debated seriously whether we should recognize them and license them, but they were licensed, and since the grant of this license, the Kalem Company has developed in a very remarkable way in size and in the character of its pictures, so that at the present time it stands among the first four of the licensed manufacturers. In the case of the Essanay Company, the situation was about the same. They were a small, unimportant concern, that we thought a license might be refused to without particular injustice, but they were licensed, and have developed so that they are a very large, powerful concern now. On the other hand, the Pathe Company at that time was the predominant factor of the licensed interests, making much more film than anybody else—

Q. You mean importing much more film than anybody else? A. Putting out. Importing and putting out much more film than anybody else, and apparently setting a standard for all of us to follow, and under competitive conditions, the Pathe people have been pulled down from the top, and instead of using sixty per cent of foreign film as was the case in the early days, we are using only about ten per cent. And there has been change in the relative position of the Edison Company, and change in the position of the Lubin Company. In fact, there has been a gradual shifting up and down of the several concerns that started out under the Edison licenses from that time to this. All due to the efforts on the part of each to excel the other and to try to get up above their competitors if they could.

Q. What is meant by the term "new subjects placed on sale" as it is used in that paragraph? A. That means the negative footage of released subjects; in other words, if a

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manufacturer or producer was releasing four subjects a week of a thousand feet each, that would be four thousand feet, so far as the vote was concerned, whether ten copies of each subject were disposed of, or fifty copies, as I remember it.

Q. What is the meaning of the term "standing order," which we find in Paragraph 10 of this agreement, and what was the purpose of the requirement that a standing order should remain in force for not less than thirty consecutive days? A. A standing order was an order placed for one or more prints of each subject released by the licensee. It was exactly like the subscription to a magazine, except that it could be cancelled on thirty days' notice. It provided for the continuous supply of pictures of that particular make under the order. It required some time to print up a number of copies from a single negative, and, therefore, it was necessary that time should be given to a manufacturer in cancelling a standing order, because if a manufacturer found himself with one or more prints on his hands that he had printed up under the belief that the standing order still stood, he would have difficulty in getting rid of them.

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Q. Why were sales for export not covered by the agreement? A. Because the patents did not extend beyond the territory of the United States, we felt that we could not impose conditions on export sales. Of course, the films were produced in the United States, and therefore paid royalty, but what happened to them after they left the United States we had no control over.

Q. What was the purpose of the provision in Paragraph 12 as to special motion pictures, where it was agreed between the manufacturer and the person ordering the same, that the negative should be the exclusive property of the person ordering it, and positive prints be made from time to time by the licensees on the order of such person, the price being fixed at \$1 per running foot for making the negative, and not less than fifteen cents per running foot for the positive printed from it? A. These special motion pictures were something outside of and apart from the regular business. It amounted to a very small part of the business, and, I think, still amounts to a very small

1 part of the business. They were pictures that were made at the request of some outsider for a special purpose.

Q. By "outsider" you mean someone not engaged at all in the motion picture business in any of its phases? A. Yes. For instance, the City of New York might want to have a picture taken showing the Street Cleaning Department. The Navy Department might want a picture taken, showing what a very pleasant life the American sailor leads. Manufacturers require pictures showing operations, for the purpose of impressing their customers. The National Cash Register Company has had a great many motion pictures made to illustrate questions of salesmanship. These were special pictures, the negatives being the property of the person or corporation for whom the picture was made. I remember the Southern Pacific Railroad Company had pictures made showing the development of the Texas lands. And there were quite a good many of them, but in the aggregate, compared to the amusement side of the business, they amounted to very little. The reason these particular conditions were imposed, was the same as in connection with the minimum price, the Edison Company being a competitor, could have gone out after this particular business and secured all of it at prices that the other licensees could not possibly have met, and it was felt that the price of a dollar per foot was reasonable. That would be only \$500 for a five hundred foot subject, which would involve sending a man and a camera and an outfit, generally are lamps, and so forth, sometimes to quite distant points. The price of fifteen cents was made higher than for the regular amusement pictures because generally not more than two or three copies were printed from these special negatives. But this part of the business was almost inconsequential.

4 Q. I call your attention to the provision contained in Paragraph 17 of the same agreement, that no sales except for export shall be made except under certain terms and conditions, one of which is that the purchaser shall return to the licensor or licensee, as the case may be, from whom such positive motion pictures have been purchased, on the first day of every month, beginning with August 1st, 1908, an amount of positive motion pictures in running feet (not purchased over six months before) and of the make of the licensor or licensee, as the case may be,

to whom it is returned, equal to the amount that was so purchased during the sixth month preceding the date of such return. I ask you what was the purpose of this requirement of the return of film? A. The purpose of this condition was to require the return of old, worn-out and eye-impairing film, the idea being to improve the character of the exhibitions. As I recall, this particular condition was not imposed or was not insisted upon or carried out by the Edison Company, under its license agreements, but was later on embodied in the agreements with the Patents Company, and carried out by that company. The effect of the condition was to largely reduce the number of these objectionable films and improve the quality of the exhibition, and as the result of this improvement, our competitors, in order to meet our competition, are required to give exhibitions of films in equally good condition. The "rain-storms" that I spoke of in the previous answer, were bringing about a condition of disrepute, so that many people who saw motion pictures only in the vaudeville shows, looked upon them as very tedious and objectionable, in fact, in the old days, generally, the moment a motion picture appeared, everybody began to scramble out.

Q. Was it intended by this provision in any way to limit the quantity of film in circulation? A. No.

Q. Or to create an artificial market or demand for more film? A. No. The reason was to improve the character of the exhibitions by removing these very objectionable films from the market.

Q. In fact, did this return of film have any effect whatever on the supply of new film? A. I do not think so. I think that the conditions of this business are such that the film is passed through certain regular well-defined channels, and when they have passed through those channels, and have served their purpose, their usefulness has practically ended, and they might come back without detriment to anyone; in other words, there is a definite track over which the films pass. They start out at one end and come out at the other end, and when they come out at the rear end of the track, they have practically served their usefulness and further uses would only be to injure the public and injure the art.

Q. Now, viewing the question from the standpoint of the

1 owner of the patent strictly, and not his interest as a producer of motion pictures, was this restriction as to the return of film of advantage to the patent owner? A. Yes. It was of advantage to the patent owner in the same respect that all these conditions were of advantage to the patent owner, namely, to improve the tone of the business, improve the character of the business, change it from a side show proposition to a high-class theatrical proposition. That development has actually taken place. The very development that we expected and predicted. At the time the Edison
2 licenses were made, almost the only theatres in existence were the small store shows. It was generally one room with some battered chairs in it, and a screen at one end, and the projecting machine at the other. The exhibition was given in absolute darkness. The place was badly ventilated, extremely dangerous in case of fire, and being in absolute darkness, terrible complaints of all kinds of immoral practices were made; in fact, the ordinary motion picture place was looked upon almost as a house of assignation. By improving the character of the films, we have been able to cultivate the interest of cultured and refined people in them, so
3 that the tone of the entire audience has improved, and as a result of that improvement, the reaction has necessarily benefited the owners of the patents.

Q. Was it believed that it tended to increase the revenues which he would ultimately derive from his royalties under the patents? A. Certainly. That is what I intended to say in few words.

Q. Could you say what percentage of any of the film returned to the manufacturer after the expiration of the six months was fit for further use for exhibition purposes? A. No, I could not. With a proposition involving thousands of films, it is impossible to lay down any fixed definite
4 rule concerning each one. You will have to deal with general rules, and the general rule is that a film that is six or seven months old is pretty well worn out. Creditable exhibitions cannot be given with it. Of course, in actual practice, films are sometimes returned that are not worn out. They are returned because the public will not permit their exhibition. Recently with our company, we had a film that was put out that was of an advertising nature, and the theatres refused to run it because they refused to advertise the goods of any-

one. Then sometimes a film will be worn out very quickly because it is very popular, and will be subjected to the greatest amount of usage in the first two or three months. That kind of a film would be returned. And sometimes we are unfortunate enough to have a film ruined the first week or the first day or the first time it is run through the machine, due to the imperfect operation of the projecting machine, or the stupidity of some operator, and such a film as that is returned,—so that it is impossible to have any fixed rule that applies to all films, but taking the question from all angles, I think that it can be said that the average film that has been run under average conditions six to seven months is worn out and ought to be returned.

Q. And that had been the actual experience of the Edison Company as a producer of motion pictures at the time this agreement was made? A. Yes, sir. We wanted to give the films their full measure of life, but get them back before they did harm.

Q. Paragraph 7 provides that the licensor and licensee shall mark conspicuously on the labels which shall be placed on the boxes or packages containing motion pictures, certain terms and conditions of sale, which labels were to be headed as follows: "Licensed Motion Picture. Patented in the United States, August 31st, 1897, reissued January 12, 1904. The enclosed motion picture is sold upon the following terms and conditions." Then follow four conditions under which the picture is sold, the first of which is that the purchaser shall not re-sell the same, but shall have only the right to use it in giving motion picture exhibitions or to rent it out. Do you know in point of fact whether the labels on the boxes containing motion pictures manufactured and sold by the licensees and the licensor and required to be so marked, were, in point of fact, so marked, in accordance with the printed conditions required by this paragraph? A. So far as I know, that is so. It was certainly so in the case of the Edison Company and I believe it was so with the other licensees, because we saw that they received these labels, and I have occasion to see a good many pictures put out by the other licensees, and they all contain this label on the box. Of course, I was quite interested in this particular proposition, and would have noticed if the label had not been on the box.

1 Q. In Paragraph 18 the licensor and licensee covenant
that they will not dispose of the motion pictures by loaning
them or renting them to others, nor use them for the purpose
of giving exhibitions thereof for profit. What was the pur-
pose to be subserved by that covenant? A. The reason for
the restriction or condition against loaning or renting films
to others was to prevent the licensees from avoiding the
other condition of the license relating to the minimum price,
in other words, the licensee might interest itself in one or
more exchanges, and lend or rent its films to that exchange
2 at a low price. That is my present recollection of this par-
ticular condition. The restriction regarding exhibitions by
the licensees had to do, I think, with preventing licensees
from going into the exhibition business. As I recall, the
exchanges with which we dealt at that time were fearful
that the manufacturers might take up the exhibition busi-
ness, and I think this condition was designed to prevent the
manufacturers from interesting themselves in the theatres.

Q. And did that covenant have some relation to the
amount of royalties to be paid ultimately under the patents?
A. In the same sense that all the conditions had, that we
3 wanted to impose conditions that would result in the satis-
factory development of the business, and as the result of
the prosperity which we thought would come to licensees
under proper conditions, the Edison Company would re-
ceive a larger amount of royalty.

Q. Most of the provisions to which I have particularly
called your attention in the Edison license agreements, were
subsequently incorporated in the license agreements made
by the Motion Picture Patents Company, and its ten so-
called manufacturers and importing licensees, which are
already in evidence in this case, is that right? A. Yes, sir.

4 Q. Confining your answer to such of the foregoing provi-
sions as were substantially incorporated in the Motion Pic-
ture Patents Company licenses, you may state whether or
not the purpose or purposes of including them in the latter
licenses were the same as was the case in the licenses is-
sued by the Edison Manufacturing Company, having in
mind, however, the fact that the Motion Picture Patents
Company, the licensor under this license agreement, was
not itself engaged in the motion picture business, that is,
producing or manufacturing? A. All the conditions or the

reasons for the conditions were the same in the case of the Patents Company as with the former Edison licenses, and all of the reasons which impelled the licensees to protect themselves from unfair treatment on the part of the Edison Company as a competitor, were doubly present in the case of the Patents Company, in view of the fact that the Patents Company was owned by two competitors, namely, the Edison Company and the Biograph Company.

Q. You were President of the Motion Picture Patents Company, were you not, from its organization up to about December, 1912? A. I was President from December 18th, 1908, until I resigned in December, 1912.

Q. Then you were President at the time when all of these license agreements were executed in Decembr of 1908? A. I was.

Q. What was the reason which induced the Patents Company, instead of authorizing the sale of these motion pictures, to restrict it to a lease? A. That was done as a result of our experiences under the Edison licenses. So far as the exchanges were concerned, it made no difference, because under the Edison licenses, there was a conditional sale with the return of the film at the end of six months, while under the Patents Company licenses, there was a lease for the return of the film at the end of seven months; in other words, the Patents Company license in terms of percentage was sixteen and two-thirds per cent. more favorable than the Edison license. The main purpose of providing for a lease instead of a sale was to more effectively prevent infringement. Under the Edison licenses, if a licensed film, in violation of the conditions of the license, was shown by an unlicensed person, it was difficult to enforce the agreement, because, in the first place, it was very difficult to identify the particular copy of the subject, and trace it back to the infringing exchange. There was no way that we could seize it, and it would have been futile to have brought a patent suit against the theatre, because the film was used by the theatre only from one to two or three days. I recall that one of the experiments we tried was to suggest to certain of the manufacturers to put private marks on each copy of a picture, so that they would be able to tell when the picture was thrown on the screen to whom it was sold, and thereby trace it back to

1 the infringing exchange. This was an expensive process,
because it meant putting a certain individual mark on
each print, and a considerable amount of bookkeeping in
keeping track of them, and I do not recall that anything
came of this suggestion, but by providing for the lease of
the films, which did not affect in one iota the rights of the
exchanges or their free use of the film in exactly the same
way that they had used them under the Edison licenses, we
were able in case of a violation of the license to seize the
films by replevin suits, or rather, the individual manufac-
2 turers were able to do that, and a good many of these
replevin suits were successfully carried out in the case of
the violation of the licenses by infringing theatres. Also
another reason that impelled us to change to the lease was
that in quite a number of States there are unfavorable laws
on the subject of conditional sales, and we felt that we
might involve ourselves in difficult problems if we con-
tinued the former plan of selling the films conditionally.
This change did not in any way prejudice the exchange, and
it was of very great help to us in enforcing our legitimate
patent rights.

3 Q. By unfavorable laws in many of the States, do you
refer to the laws of States like Pennsylvania, for instance,
where a conditional sale of a chattel, that is to say, a sale
with a reservation of title in the vendor, is not recognized?
A. Yes. We had run afoul of those laws in handling the
Edison business phonograph on the instalment plan. I
think there were similar laws in the State of Ohio.

Q. Did you find also, that it was difficult to enforce the
requirement of the provision in your license as to the re-
turn of film after six months, where title had passed? A.
Yes. We did not, as I said before, have any of the film
4 returned under the Edison licenses, but—

Q. You were confronted with that difficulty? A. We
were confronted with that difficulty, and a good many
exchange men in talking with me, expressed the opin-
ion that, having bought the films, they thought they
ought to be allowed to keep them, and not be required to
return them. And I think if we had gone on under that
arrangement, we would undoubtedly have confronted dif-
ficulty with a good many exchange people who did not seem
to appreciate what a conditional sale was.

Q. What was the purpose of incorporating in the Motion Picture Patents Company exchange license agreement, the paragraph reserving to the Patents Company the right to cancel the license on fourteen days' notice? A. There were a good many reasons for this. There was no way, or, at least, there did not seem to be any way, to bind the exchanges irrevocably to the Patents Company, and compel them to always remain licensees, and deal in licensed films. The exchanges always reserved the right to renounce the license whenever they saw fit to do so.

Q. You mean that the contract was entirely unilateral in that respect? A. In that respect it was. Then again, in the grant of these licenses, we were not starting out with an infant industry that could be nursed along until it reached the full size of manhood, but were dealing with a large, existing, highly disorganized, complex situation, and we had to move quickly, so as to cause as little disorganization and disturbance as possible. We granted licenses to all the exchanges, so far as I remember they wanted them, without making any particular investigation into their standing or responsibility, and we felt that it was important that the right should be reserved to terminate the license if we found that an exchange was unreliable, or if, for any other reason, it was considered desirable, from the standpoint of the patentees, to end the relationship of the licensor and licensee.

Q. The exchange did not pay any consideration to the Patents Company for these licenses, did they? A. No, sir. The license was a mere privilege and not a right. Like any license, it was the privilege to be immune from suit during the existence of the license.

Mr. GROSVENOR: I object to all this characterization and opinions given by the witness.

By Mr. CALDWELL:

Q. You may narrate the events that led up to the formation of the Patents Company. A. When the Edison licenses were in effect, the business resolved itself into two antagonistic factions, the Edison licensees on the one hand, and the Biograph Company and Mr. Kleine, I think, and I think one or two Biograph licensees, on the other. Our patent on

- 1 the camera had been sustained, and our position was therefore pretty strong, and we had the film patent which covered all motion picture films; while, on the other hand, the Biograph Company had patents on which it was asserting its rights; particularly on projecting machines. These were the Latham patent and the Pross patent, and the Armat-Jenkins patent. We were going ahead with the accounting on the camera patent, and were also pressing the suit on the film patent against the Biograph Company, and against various infringers in the Biograph camp. On their part,
- 2 they had brought a suit against us on their patents. When I say "us," I mean the Edison Company and its licensees. It looked very much as if all the fighting that we had been engaged in ever since 1898 or earlier was to start all over again. When the Edison licenses were being granted, I offered the Biograph Company a license, but they refused to take it, and later on I saw Mr. Marvin with Mr. Kennedy, at the suggestion, I think, of Mr. Pathe, or possibly Mr. Gaumont may have made the suggestion,—and we discussed the possibility of settling our suits—settling our patent difficulties. Because we both realized that if the suits that
- 3 were pending should turn out successfully to the patentees, we would simply embargo each other. We would prevent the operation of any successful camera under the camera patent, and we would prevent the sale or the use or any importation of film under the film patent, and they would prevent the use or exhibition of any film, however made, under the patents of the Biograph or Armat companies. Mr. Marvin explained the case from his point of view and pointed out the importance of his patents, how valuable they were, and thought it might be possible to have some scheme under which we would recognize his patents, and he would
- 4 recognize our patents, with a division of the royalties. I asked him how much royalty he thought the Biograph interests should get, and he said he thought they should get half. I did not think he should get half, because Mr. Edison's patents were then—the camera patent had been sustained, and the licenses granted, and he was getting two hundred and fifty or three hundred thousand dollars a year out of them. I thought his position was rather favored, and very much stronger than the Biograph. Mr. Marvin argued that the Armat patent had been sustained at final hearing before

Judge Hazel, and could be made the basis of preliminary injunction, and the Latham patent had a long time to run, and was valuable for that reason, and he thought that they were entitled to half of the royalties, and I would not agree to that, so we both separated, I insisting upon the value of our patents, and he insisting upon the value of his patents, and the fight went on again. Or, rather, the fight still continued, because this brief talk did not stop it at all. Then a little later, at the request of Mr. Kleine, I went up to see him at the Republican Club. I had always known him and liked him, and he told me that the constant fighting between the Biograph and Edison companies, with the terrific uncertainty of the result, had put everybody up in the air, and they did not know where they were, and he suggested that if we possibly could, we ought to get together and have some agreement that would result in a termination of all the warfare, and putting the business in a condition of quietude, so that people could go ahead and invest money in their plants, and build better theatres and develop the business. Well, I saw Mr. Marvin and Mr. Kennedy again, I think in company with Mr. Kleine, and we went through the same performance that we did at our first meeting, Mr. Marvin making his speech, and I making my speech, and he making his demand for half of the royalties, and I refusing the demand, until it occurred to me that if Mr. Edison could be assured that he would get his film royalties, why, it would be possible then to allow the Biograph Company to take an equivalent amount out of the royalties that might be collected from other sources, and that anything remaining over should then be divided between the two interests, because primarily my purpose was to try to save the money that Mr. Edison was getting under his patents. I did not want to jeopardize that or divide it up with anybody. This suggestion met with the approval of Mr. Marvin and Mr. Kennedy, and then I saw that it was possible to have an arrangement that would bring the two concerns together. We had a talk at that time, and I think we had several other talks about how the thing should be done, and naturally the first suggestion was for them to recognize our patents by taking a license under our patents, and we to recognize their patents by taking a license under the Biograph patents, but this seemed to be a very difficult thing to do, and it would have to be done any-

1 way by means of a combination or arrangement, so as to divide the royalties that were to be collected, and it seemed to us that the only proper way to do was to bring all the patents into one holding corporation to act as a licensor, and that would provide the various ways of collecting the royalties, and that would collect the royalties, and that would divide the royalties between the several patent owners, on the basis that we had agreed upon, and that company was later formed and was called the Motion Picture Patents Company.

2 Whereupon, at 4:30 P. M. on this 10th day of November, 1913, the hearings are adjourned until Tuesday, the 11th day of November, 1913, at 10:30 A. M., at the Hotel Manhattan, New York City.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> UNITED STATES OF AMERICA, Petitioner, <i>v.</i> MOTION PICTURE PATENTS Co. and others, Defendants. </div> <div style="font-size: 4em; line-height: 1; padding: 0 10px;">}</div> <div style="text-align: left;"> No. 889. Sept. Sess., 1912. </div> </div>	2
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NEW YORK CITY, November 11, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M., November 11, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig. 4

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

1 Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. Mr. Dyer, in answer to my last question yesterday, in speaking of your conference with Mr. Marvin, you stated that Mr. Edison was getting from two hundred and fifty to three hundred thousand dollars a year out of licenses. Did you mean by that he was getting that sum from his royalties alone under his patents, or altogether, including his profits from his producing plant? A. That is what

2 I figured the royalties would amount to.

Q. After the formation of the Patents Company, to what persons were licenses issued to produce and to import? A. Licenses were granted to the seven Edison licensees, and also to the Edison Company, Biograph Company, and to George Kleine.

Q. Did these persons constitute substantially all of the persons engaged in the production and importation of motion pictures at that time? A. I should say a very considerable portion.

3 Q. Those who were not licensed, were they of any importance in the art? A. No, sir.

Q. So substantially the entire art was licensed? A. Substantially so.

Q. To what other classes of persons were licenses issued? A. Licenses were also issued to the manufacturers of projecting machines, and also to exchange men who were doing a distributing business, and finally to theatres who might wish to show licensed film.

4 Q. I think it is in evidence that about ninety-five per cent. of the manufacturers of projecting machines were licensed. Does that accord with your recollection? A. I think fully that. I know that all of the important manufacturers were licensed. And I might add that licenses were granted to other concerns who started up in business for the manufacturing of projecting machines after the Patents Company was formed.

Q. What was the policy of the Patents Company, in the issuance of licenses to exchanges? A. To grant a license to any fairly representative exchange which might wish to be licensed. I do not recall that any license was refused

to an exchange at the time that the Patents Company was started. 1

Q. Can you state why the license agreement, or the license to George Kleine, restricted his importations to the makes of certain European producers? A. At that time, as I stated yesterday, the Pathe Company towered head and shoulders above the other producers, and especially in Europe, and next to them, although considerably smaller, was the Gaumont Company, and below the Gaumont Company was a large number of small producers. Mr. Kleine had agency contracts for a great number of brands of films, most of which we never heard of. We felt that it would be a mistake to allow these unimportant foreign made films to enter into the programmes of the American manufacturers, because we were fearful that it would not add prestige to it. The Gaumont films, and the Urban Eclipse films were good representative foreign films, and the best of the films Mr. Kleine was importing, and we felt that these films could properly be introduced into the programmes. Mr. Kleine was, therefore, allowed the importation of three subjects per week, of these two films, but, of course, he was not restricted as to the number of copies that he could import, and dispose of. This gave the licensed output of foreign films—as Pathe, Gaumont, Urban Eclipse, and Melies. My recollection is that most all, or at least many of the films that were formerly handled by Mr. Kleine were, when he terminated his agency for them, imported into this country by other concerns. So that their importation into this country was not stopped, although they were not licensed. 2 3

Q. So far as you know, did Mr. Kleine protest against being restricted to importation of these two brands of films? A. No. Those two brands were practically his entire business. 4

Q. Were many of the other films imported by Mr. Kleine of a character to reflect credit upon the art? A. No, they were poorly and cheaply made, and many of them, as I recall, were not the kind that would appeal to the American people. As a matter of fact, foreign films, I do not think, at any time appealed very strongly to Americans, because the foreign idea of morals is different from the American idea; but a large mass of foreign films was used in the early days, because those were all that the Ameri-

- 1 can had, except the limited number of American films that were being gradually developed.

Q. In refusing, then, to license these cheap films, many of which were not up to the American standard of morals, was the Patents Company actuated by any purpose or desire to improve the condition of the art, and thereby increase the revenues which they might ultimately receive under their patents? A. Yes, sir.

- 2 Q. Mr. Dyer, will you state just what the motion picture business is, as it is conducted in this country today? A. The motion picture business at the present time is practically a theatrical business, because it deals, for the most part, with dramatic works. It makes the same appeal to the imagination that is made by the drama. It is a new form of intellectual appeal. It depends for its successful accomplishment, first, upon an optical defect of the eye, known as the persistence of vision, and it depends, in the second place, upon the human faculty of forming mental images when the imagination is aroused, as with literature, paintings, music, or the drama. A moving picture audience is like any other audience, sitting spellbound and unconscious of its surroundings. Like the regular stage, the spectator of a moving picture, experiences the feelings and sensations of the characters which appear on the screen. These photographic images are just as real to the moving picture spectator as are the living, breathing, actors and actresses of the regular stage. The popular motion picture actresses are just as much overwhelmed by letters from admirers as the most popular actresses of the regular stage, although they are known to the people only by reason of their photographic representations.

- 4 Mr. GROSVENOR: That is highly interesting, but I fail to see how it is relevant or material, and, therefore, we make objection to it.

Mr. CALDWELL: I think it very material to show to the Court the real nature of the business conducted by these defendants, which they are charged with restraining and monopolizing.

A. (continuing): The motion picture business, like the theatrical business, falls naturally into three groups—

first, the producer; second, the distributor, and third, the exhibitor. In the production of a motion picture drama, the play is selected and prepared, in precisely the same way as if for the regular stage, except, of course, that with the regular drama, the playwright provides the spoken words; but in the case of pantomime there is really no difference in the original play, except that the motion picture, because of its greater flexibility, and greater possibilities, permits of many more scenes, and the securing of effects that would not even be suggested in the case of a pantomime. Having prepared the play, it is turned over to a director, exactly as is the case with the regular drama, and that director gathers around him in one case, as in the other, the body of actors selected to perform the respective parts. In each case costumes are provided, proper scenery is painted, and the necessary properties secured. The director rehearses the actors so that they may become perfect in their parts, exactly as the director of a regular stage conducts his rehearsals; and when perfection is reached, the motion picture camera is brought out, and the finished performance given before the camera, and a photographic negative record taken of that performance. In other words, so far as the production is concerned, the motion picture art is the same as the regular dramatic art, except that instead of utilizing the body of actors collected by the director to go out on the road and give their performances before the various audiences, the director in the case of the motion picture play sees that a photographic record of the drama is made, and copies of this record are sent out on the road, and are exhibited in the several theatres. The second class, or group, connected with the motion picture business, namely, the distributor, has its analogy in the regular theatrical business in the booking office, or in the booking agency, and in the motion picture business this distributor is called an exchange. The purpose of the exchange is to distribute the plays among the motion picture theatres. Because of the brevity of the motion picture, a programme usually comprises three or more plays, and these programmes are changed from one to seven times weekly. With the more important pictures, which are a recent development, and

- 1 which seem to be destined to greater use in the future, pictures of the same general type as *Quo Vadis*—the booking is precisely the same as the booking of a regular dramatic performance, dates being arranged in advance, and advertised by the theatres exactly as they might advertise a regular road show. The only difference between a distributor, or exchange, in the motion picture business, and the booking office, or the booking agency, in the theatrical business, is that in one case the distributor deals with the photographic record of the play, while the booking agency in the theatrical business, deals with living, breathing
- 2 actors, and the tangible accessories of the performance, such as scenery, costumes and properties, including in the latter sometimes, various animals. The difference between the moving picture business in this respect, and the theatrical business, is that the transportation of a theatrical company may require one or two cars, while the moving picture requires a package smaller than a dress suit case. So far as the third group is concerned, namely, the theatres, one is practically the same as the other. In fact, it is very common for motion pictures to be shown in regular theatres, and it is getting to be more and more common
- 3 for small plays, and vaudeville acts, to be shown in connection with motion pictures in picture houses. In fact, in one State that I know of, Massachusetts, the law prohibits continuous exhibitions of pictures for more than twenty minutes at a time, so that it is necessary to fill in with vaudeville, or small plays.

The only difference between a motion picture theatre and a regular theatre is that while a regular theatre has a horizontal stage, upon which the actors perform, a motion picture theatre makes use of a vertical screen, upon

4 which the photographic representations of the actors are projected; and also, a motion picture theatre is generally smaller than a regular theatre, and more economically run, and the price of admissions is almost invariably lower.

Mr. GROSVENOR: Everybody knows all these facts, and I object to littering up the record with all of this talk.

Mr. CALDWELL: The record does not, up to date, 1
disclose these facts.

Mr. GROSVENOR: Everybody knows that the admission to motion picture theatres is less than to other theatres.

Mr. CALDWELL: But those are not necessarily matters of which the Court would take judicial notice—we have got to prove them.

The Witness: I don't think I can add anything to that.

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By Mr. CALDWELL:

Q. Then, in point of fact, the only thing which differentiates the picture play from the regular theatrical play is that the latter is presented by living actors, and by word of mouth, and the former by photographic images of these same actors? A. That is correct, and apparently the effect on the audience is the same in the one case as in the other. In the case of the motion picture it seems to be a very remarkable fact that the imagination of the audience revivifies the photographic images, and turns them into life. Not only this, but the imagination also supplies the perspective to the fleeting images, and also supplies color to the black and white photographs. The incongruity of a black and white rose never seems to appeal to a moving picture audience. 3

Q. The various mechanical devices involved in the production of the motion picture play are not apparent at all to the audience, are they? A. You mean the cameras used?

Q. Yes, the cameras, projecting machines, and any other mechanical devices used in the production of the play? A. No, sir. The only thing that the audience sees is the photographic images on the screen, apparently in movement. 4

Q. The film itself is not seen? A. No, sir.

Q. Will you state what classes of persons are engaged in the production of the motion picture play? A. First I should take the scenario writer, who prepares the necessary play or drama; then the director, who attends

1 to the rehearsing of the actors; then the actors who appear in the play; scene painters who prepare the scenario; carpenters who make the necessary properties; people who have charge of the costumes and wigs; and finally, the camera man, who actually operates the camera to take the picture; with the usual accessories of electricians and mechanics generally found around a studio or in a regular theatre.

2 Q. What class of persons in the motion picture business is employed in your second class that you have described, which you have stated is analogous to the booking office or booking agency? A. These are the exchanges. Offices that are located at centers of distribution, in charge of a manager who is familiar with the business, with a stock of films that is constantly mobile, inspectors and repairers, who are attending to the inspection and cleaning and repairing of the film, booking men, who attend to the booking of the programs to the several customers, and the usual office employees, who attend to the general work.

3 Q. While it is usual for the producer of motion pictures to have a so-called manufacturing plant as part of his equipment, is that always a necessity? A. No, the manufacturing operations are quite independent of and distinct from the purely artistic work of producing the plays. Just as the mechanical work of a regular theatrical performance is independent of the artistic part. It is quite the common thing in this country for studios where the artistic work is done, to be located sometimes as far as three thousand miles away from the manufacturing plant where the purely manufacturing operations are performed. And in Europe, it is quite common for companies to go no further than to attend to the artistic work of producing the negative, leaving the manufacturing operations to some manufacturer. The Pathe Company, in Paris, for instance, do the printing for quite a considerable number of the producers, and I believe this will be the eventual development, or one of the developments, possibly, in this country. I think even now there are some concerns in America who have no manufacturing plants, but who merely make the negatives.

4 Q. Take the case of the Edison Company. Will you

state where its studio is located, and where its so-called factory is located? A. The main studio of the Edison Company is at Bedford Park, Bronx, New York, and the factory where the printing operations are performed, is at Orange, New Jersey, about twenty miles away. The Edison Company also maintain a studio, or did, while I was connected with them, at Los Angeles, California.

Q. Can you state the locations of the studio and the manufacturing plant in the case of any of the other producers?

A. Yes. In the case of the Biograph Company, the factory and main studios are located in New York City, but they also maintain a studio at Los Angeles. In the case of the Lubin Company, the factory and one studio are located in Philadelphia, but they maintain very large studios at Betzwood, about thirty miles outside of Philadelphia, and studios also in Jacksonville and Los Angeles. The Selig plant is in Chicago, where its main studio is also located, but the Selig Company maintains a large studio at Los Angeles. And the same is true of the Essanay Company, which has recently started the production of negatives, I think, at Watkins Glen, New York. The Pathe Company have their manufacturing plant at Bound Brook, and their American studio at Hoboken, while their main studios are in Paris.

Q. Can you state why so many of the studios are located in Los Angeles, California? A. On account of the generally fine weather there, and the great variety of natural scenery, just the same as many of the studios of French producers are located on the Mediterranean.

Q. What has the fine weather to do with the work of a studio? A. Because a great deal of work has to be done outside of a studio, for getting outside scenes, and it is important that there should be as little waste of time as possible, because waste is very expensive in the production of pictures, and it is important to keep the actors employed as actively as possible. Good sunlight is also important to secure proper photographic quality.

Q. Then would you say that the term "manufacturer," as applied to the producer of motion pictures, was a misnomer in a sense? Does it correctly describe the occupation? A. No. I do not think it does. I think the same relation exists between the producer and a manufacturer, if we attempt to

- 1 separate them, that exists between the producers of the Century Magazine, who do the literary work and get up the magazine, and the De Vinne Press, that prints the copies of the magazine.

Q. What percentage of motion pictures exhibited in this country would you say are of a purely theatrical character, that is to say, either drama, comedy or farce ? A. The number varies from week to week, but I think the average would be from 85 to 95 per cent.

- 2 Q. And the rest of the pictures are made up of so-called scientific, educational, scenic and topical subjects, is that correct? A. Yes, sir.

Q. What is meant by a scientific picture? A. A scientific picture is one that illustrates some scientific phenomenon, such as the flight of a bullet, or views of the moon, or a chemical reaction, all of which have been shown in motion pictures.

- 3 Q. Can you, strictly speaking, differentiate between a scientific picture and an educational picture? A. Yes. I think an educational picture would be correctly defined as one that possessed educational value without the scientific attributes. For instance, a picture illustrating the raising of sheep, or the iron industry, or the tobacco industry, or the sugar industry, all of which have been shown in motion pictures. It is getting to be quite a common thing to disguise educational pictures by a dramatic story, so as to make them more attractive. For instance, the Edison Company made a very well-known picture called "The Man Who Learned," which was designed to point out the dangers of unsanitary conditions in connection with the supply of milk, but the moral was taught in a story of great dramatic interest. And we also made another picture called "The Wedding Bell," that was a strong dramatic story, but was essentially an educational picture, because its object was to point out the evils of sweatshop labor.

4 Q. What is a scenic picture? A. A scenic picture is one that contains simply scenery, or possibly views taken in a city, showing important buildings or streets. For instance, a picture of the Alps would be a scenic picture, and one showing a panorama of Broadway, New York, would also be a scenic picture.

Q. And what is a topical picture? A. A topical picture is one that depicts a subject of topical interest, such as a championship baseball game, or prize fight, or the inauguration of a President, or a subject of this general character.

Q. What do the so-called dramatic pictures, as the term is used in the motion picture business, include? A. I do not think the term dramatic picture is used, but we refer to dramas, by which we mean a story of dramatic interest, devoid of comedy or farcical features.

Q. Then the term "drama," as used in this art, would include tragedy and melodrama? A. No. We sometimes use the term "melodrama" to mean a drama with tragic features, but ordinarily the word "drama" includes everything of a dramatic nature, except comedies.

Q. Then are the terms used in the same sense that they are used in the theatrical profession? A. Yes. In exactly the same sense.

Q. What are the considerations which enter into the selection of a play to be produced on the motion picture stage? A. Strength of plot, the timeliness of the subject, interest of the story, the moral sought to be taught, are all factors that are considered in the selection of a motion picture play.

Q. They are precisely the same, then, as in the regular theatrical business? A. Yes, sir, exactly. The motion picture business, as I pointed out, is practically a theatrical business.

Q. What means, if any, are resorted to by the producer of a play or the exhibitor, in order to supply the omission of the spoken word? A. The fact that with the motion picture play, there is no dialogue except, of course, in the case of the talking pictures which are a recent development, it makes it impossible with a motion picture play to get the very fine shadings of emotion that are possible with the spoken word, so that the motion picture play is perhaps not as complex as the regular spoken play, but there are several ways to supply the deficiency of the spoken word with the motion picture play, by which its effectiveness is very much increased. For instance, the actors, as is well known, generally in rehearsing, make use of words, and very frequently these words can be disting-

1 uished on the screen, particularly when they are single words, such as "mother" or "help." Then, the director has the advantage, which is not possible with the regular spoken drama, of throwing sub-titles on the screen, that is to say, words or phrases or sentences that are designed to explain the significance of the scene which is to follow. A sub-title is used when the director fears that the proper effect of a scene will not be appreciated. Then also with the motion picture play, it is very common to throw on the screen, letters and telegrams and documents which the audience can read, for the purpose of making the plot clear, and which, on the regular stage, are read by one of the characters as a part of the dialogue. Then, a very effective way of supplying the deficiency of the spoken word, is by so-called double exposure, where, on the main picture appears a small auxiliary picture designed to explain the action of the main picture. For instance, in a regular spoken play, if one of the characters wished the audience to know that at one time he had been a cowboy on the western plains and had taken part in a certain incident, he would tell his story as part of the dialogue. In the motion picture play, we actually throw on the screen as an auxiliary to the main picture, scenes showing the character as a cowboy on the western plains, and enacting the same incident that he would describe by words in the regular play. These various expedients have been developed in the art, and permit motion picture plays of fairly complex character which are perfectly intelligible to the audience.

Q. Then the double exposure is a device which makes possible dramatic representations on the motion picture stage which is impossible on the legitimate stage, is that correct? A. The double exposure, of course, on the regular stage would be impossible, but the same effect is secured on the regular stage by means of the spoken word.

Q. But the dramatic action is wanting? A. The dramatic action is wanting, of course.

Q. You have mentioned the play called "Quo Vadis." Have you ever seen that play? A. Yes, sir.

Mr. GROSVENOR: Who brought out Quo Vadis?

The Witness: The Cines Company at Milan.

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Mr. GROSVENOR: That is a foreign company?

The Witness: Yes.

Mr. GROSVENOR: I object to any examination about Quo Vadis.

By Mr. CALDWELL:

Q. Was Quo Vadis a picture imported by one of the so-called licensed importers of the Motion Picture Patents Company? A. Yes, sir, it was imported by Mr. Kleine. 2

Q.. And that picture is licensed by the patents owned by the Motion Picture Patents Company, is it not? A. Yes, sir.

Mr. CALDWELL: I think that answers your objection, doesn't it, Mr. Grosvenor?

Mr. GROSVENOR: No, I make the objection that it is entirely immaterial.

3

By Mr. CALDWELL:

Q. There is a scene in that picture that takes place in the Roman amphitheatre, is there not? A. Yes, sir.

Q. Could you describe that scene briefly? A. Yes. The scene shows the representation of the Roman amphitheatre with Nero and his attendants in the seats of honor, and a good many thousand spectators depicted as the audience, and the turning of the lions into the amphitheatre to devour the Christian martyrs.

Q. Are all of these spectators in motion? A. They are the photographs of real people. 4

Q. In motion? A. In motion.

Q. Would such a scene as that be possible on the regular dramatic stage? A. No, sir.

Q. Why not? A. Because of the limitations of the stage, it would be impossible to anywhere near approximate the size and grandeur of the settings. On the regular stage, the audience in the amphitheatre would be confined proba-

- 1 bly to fifty to a hundred people. In the motion pictures, I think there were at least three thousand in the audience, and possibly five.

Q. On the regular stage, the spectators would be represented, would they not, by painted images on the scenery?

A. They might be. Or they might be real people gathered on the stage.

Q. There is another scene in that play which depicts the burning of Rome, is there not? A. Yes. There are several scenes showing the burning of Rome.

- 2 Q. Could that scene be possible of reproduction on the regular dramatic stage? A. Not to the same extent. Not with the same vividness nor could it cover the same area. The regular stage is necessarily circumscribed by reason of its limited size.

- Q. From what sources do the producers of motion picture plays obtain their plays? A. Generally, the plays are prepared by a new type of literary artist, who has developed with the art, called the scenario writer. Sometimes these scenario writers are regular dramatists. For instance, the present Congressman, E. W. Townsend, of my home town, was a scenario writer for the Edison Company, and was also a dramatic writer and novelist. These scenario writers base their plays on original plots, and sometimes they base them on other sources of literary work, such as standard works of fiction. The Bible is a very potent source of inspiration for motion picture plays. Most of the biblical scenes have been enacted as parts of motion picture dramas. Most of the works of Dickens and Thackeray have been converted into motion picture plays. Many of the plays of Shakespeare have been used, and other standard dramas. Poetry is also a source of inspiration.
- 3
- 4 The Lady of the Lake has been given. Such an apparently impossible subject as Pippa Passes, by Browning, was made into a very beautiful motion picture play by the Biograph Company. By means of the motion picture, any work of fiction, or of the drama, can be presented graphically and vividly to the audience for five cents.

Q. Does it happen with more or less frequency that the authors of plays, playwrights, who write for the regular dramatic stage, also write motion picture plays? A. Many dramatic authors write motion picture plays. For instance,

I have mentioned the case of Congressman Townsend. And I know that Mr. Augustus Thomas is now working on motion picture plays, and also Charles Klein. 1

Q. Does it often happen that a well-known work of fiction is dramatized for the motion picture stage, just as it is on the regular dramatic stage? A. Oh, yes. That is another source of inspiration. For instance, the Famous Players Company are just putting out a play called, "In the Bishop's Carriage," which first appeared as a novel. And also, "Soldiers of Fortune," by Richard Harding Davis, is now being made into a motion picture play, and this first appeared as a novel. 2

Q. Do you happen to know whether "Ben Hur" and "The Last Days of Pompeii," have also been dramatized for the motion picture stage? A. Yes. Both of these works have been made into motion picture plays.

Q. Would you say that that is typical of what has been done, and what is being done every day in the motion picture art? A. Yes. The motion picture art is bringing these fine, standard, elevating works, to the attention of millions of people of the United States, who possibly otherwise would know nothing whatever about them.

Q. Does it often happen that a regular dramatic production which has appeared upon the so-called legitimate stage, has also been enacted before the motion picture camera, and reproduced on the motion picture stage? A. Yes, that also has been, and is being, done. 3

Q. Is any knowledge of stagecraft, as applied to the legitimate stage, requisite for the motion picture production after the play has been selected? A. Absolutely. The motion picture director has to be just as skilful in sizing up and properly placing a dramatic situation, as on the regular stage. He has to also keep in mind at all times, the limitations of the field of the camera, and must keep his actors at the proper distance away from the camera. And he also has to be familiar with the conditions of light, so as to secure the proper photographic effect. But in a dramatic sense, his work is identical with the work of the ordinary stage director. 4

Q. And the ultimate object is to produce the same effect upon the motion picture audience as is produced in a regular theatre? A. That is the real object.

1 Q. To what extent do the producers of motion pictures have stock companies of actors and actresses in their employ? A. All the licensed producers, as far as I know, employ from one to ten regular stock companies for the purpose of making the motion picture plays.

Q. And the same thing is true of the unlicensed producers, is it not? A. As far as I know, it is.

2 Q. From what class of persons are these stock companies recruited? A. In a large measure from actors from the regular stage. There is a constant shifting back and forth of actors from the regular stage to the motion picture stage, and vice versa, and constant shifting of actors from one motion picture company to another, in fact, the motion picture work is looked upon by the actors as simply one of the opportunities for employment.

Q. Is it quite common for stars in the theatrical world to accept engagements on the motion picture stage? A. Yes. This is getting to be quite common. Sarah Bernhardt, James K. Hackett, Mrs. Fiske, Charles Hawtrey, are all well known stars, and they have appeared in motion pictures.

3 Q. Will you describe a motion picture studio and its equipment? A. Motion picture studios are of three classes. First, the outdoor studio; second, the daylight studio; and third, the so-called dark studio. With an outdoor studio, there is simply a platform out of the sunlight with the stage sets, properties, and scenery, and the action takes place out of doors, the photographing being done by sunlight. These studios, of course, are used only in good weather, and for a limited number of hours each day. They are more common in places like Jacksonville and Los Angeles, where the climatic conditions are favorable. The
4 daylight studio is a large building, somewhat like an immense conservatory, with an extensive stage, and a glass roof, and ordinarily, glass sides. Generally, daylight studios are equipped with powerful arc lights for the purpose of supplementing the sunlight in overcast weather, or for working at night, or for accentuating certain lighting effects which would be impossible for sunlight. For instance, the glare from a fireplace. These daylight studios are provided with screens made of thin cloth to be pulled over the glass top for the purpose of diffusing the light, exactly as

in an ordinary portrait studio. The third class, or dark studio, is very similar to the daylight studio, except that it is a large closed room lighted entirely by artificial means. A modern studio is equipped with a scene-painting department for the manufacture of scenery, and a large property room is also provided, in which a multitude of the commoner properties are kept, also costume room, carpenter shop, and other necessary accessories.

Q. Dressing rooms for the actors and actresses? A. Dressing rooms for the actors and actresses, and rooms in which the directors work, and so forth. I have had in mind in answering your question, particularly the Edison daylight studio, but I have visited the studios of most of the licensed manufacturers, and the same description applies substantially to all of them. Sometimes the daylight studio will be combined with a dark studio in a building of several floors, the upper floor being enclosed in glass so as to comprise the daylight studio.

Q. After the motion picture play has been selected, what is done in the way of providing costumes and scenery, and properties, and so forth? A. Ordinarily the director who is assigned to put on the play, after having studied the play very carefully so as to thoroughly understand it, provides that the proper scenes shall be painted, giving the directions to the scene-painting department, and also provides for the necessary costumes and properties. He generally explains the plays to the actors who may have been selected to perform the parts and explains to them what characters they are to take, and how they are to be made up. The making-up of a motion picture actor is the same substantially as on the regular stage, except that the make-up is somewhat accentuated, and also regard has to be taken to the proper photographic quality of certain colors. For instance, photographically, blue shows almost white, and red is almost black, so that a great deal of rouge which might be used on the regular stage, would be avoided in the moving picture art, as it would appear black.

Q. It is customary to rehearse the actors and actresses in their parts before the camera is brought into play? A. Oh, yes. The rehearsing is very carefully done, because upon that depends the whole success of the final performance. The rehearsing of a motion picture play is rela-

1 tively as carefully done as on the regular stage. It takes sometimes all day to get the actors properly rehearsed to take a scene. And in the case of some scenes involving a great many actors, it may take several days to rehearse the scene.

Q. During this rehearsal, do the actors speak their respective parts, or is the action entirely pantomime? A. A certain amount of talking is done, principally for the purpose of making strong scenes more convincing. The actors do not have long involved dialogues the same as on the regular stage, but they generally are talking—generally are saying something along the lines of the actions that they are trying to portray.

Q. In some of the motion picture dramas, is any dialogue written for the performers by the author, or is the scenario entirely descriptive of the dramatic action? A. It is quite a common thing for scenario writers, in order to emphasize the strength of certain scenes, to prepare simple dialogues for the characters to speak, although this is not always the case.

Q. Then the motion picture camera is not brought into play until after the company has been rehearsed, and their rehearsal is satisfactory to the stage manager or director, is that correct? A. That is correct. I might say that the motion picture camera is the first observer of the finished performance.

Q. And up to that point, no mechanical appliances have been introduced whatever, have they? A. Except such as might appear as mechanical properties; but nothing has been introduced in a mechanical sense that differentiates the motion picture play up to that point from the regular dramatic performance.

Q. If in the development of the negative motion picture, any defects are found, either of acting or photography, what happens? A. The scene is taken over again, the actors being again required to enact the scene, and a new photograph being taken of it.

Q. That involves considerable loss and expense, does it not? A. That involves a very great loss, because, although the loss of film may not be very much, yet the loss in time of the actors amounts to a great deal.

Q. Is it ever the practice to have more than one camera

turned upon the scene of action at the same time? A. Yes. 1
It is generally the practice to have about two cameras.
This was done in the case of the Edison Company for the
purpose of providing a negative which could be sent abroad,
because our foreign business was the sale of copies of pic-
tures made in Paris. By having two cameras, the producer
can select the better picture. The two pictures would dif-
fer, because they are taken from different points of view,
and one is better than the other. In the case of a very
expensive scene, for instance, the collision of two locomo-
tives, where, in case of some trouble, it would be impossible 2
to have a second performance, the producers may have as
many as ten cameras on the scene so as to be sure that the
picture is secured. You understand that sometimes these
cameras fail to work, and after the scene has been patiently
acted, the director finds that not a foot has been taken.

Q. And in the taking of a picture representing some
topical event of unusual interest, such as the inauguration
of a President, which you have mentioned a while ago,
more than one camera would be brought into play there,
would it not? A. Yes. It would be difficult to get a Presi-
dent to give a second performance in the case of failure. 3

Q. Explain what is done with the negative. A. The
negative is developed and dried, just like any ordinary
kodak negative, except that its great length has to be
taken care of. For this reason, it is generally wound on
a big drum, or around a rack about the size of a clothes
horse, and in that condition, it is developed and dried.
From this negative, positive prints are secured in exactly
the same way as making a transparency, except that the
transparency is on a celluloid strip, and not on a glass
plate. And of course, the printing has to be done mechani-
cally, owing to the enormous number of pictures that have
to be printed, so that they are run through a printing ma-
chine that is very similar to a projecting machine, except
that it runs much more slowly, and after the printing of
positives, they are developed and dried like any other photo-
graphic transparency. 4

Q. What is meant by sub-titles, in connection with the
exhibition of picture dramas? A. A sub-title is one of the
means used to take the place of the spoken word, and is
a word, or phrase, or sentence, or a short description, that

1 is thrown on the screen, either in advance of the whole picture, so as to give the audience some idea of what is going to happen, or else, in the case of some particular scene that may be rather obscure, to advise the audience what the scene is designed to show. Sometimes, also, a sub-title is used to supply a hiatus in the performance, for instance, the word "Later," or "Twenty years after," or something of that sort is used, so as to prepare the audience for the scenes that are to follow, and not confuse them.

2 Q. Is there any limit to the number of scenes which may be utilized in a motion picture drama? A. Practically not.

Q. Is it customary for the producer to give a private exhibition of the drama for criticism, before it is leased or placed on lease, or placed on sale? A. That is invariably the case. The director or producer, of course, would not think of putting out a play unless it had been very carefully inspected, so as to be sure that it was of the proper standard. And these preliminary inspections are also done for the purpose of eliminating superfluous scenes. It is almost always the case with a thousand-foot picture, that the negative may be from 110 feet in length up to possibly 2,000 feet, and it is necessary to cut this down to a thousand feet, so as to make a complete reel, so that the picture is gone over quite a number of times in order to get it in the best final form.

3 Q. Do you see any analogy between the distribution of these motion picture plays and the sending out of one or more road companies from town to town, to produce a regular dramatic play? A. Yes. It seems to me that the two are strictly analogous. With each, arrangements are made with the theatres for definite performances, and dates; and with each, the company in the case of the theatrical troupe, or the films in the case of a motion picture play, are distributed and sent to the exhibitor so as to fill the booking dates. Ordinarily, with the motion picture play, owing to its fragile nature, it is sent back to the exchange distributor after being shown, so that it can be inspected and repaired and kept clean, but in certain territories, speaking for the General Film Company, it is the custom to send motion picture plays out on a cir-

cuit from theatre to theatre, so that they may pass through eight or ten theatres in succession, before coming back to the exchange, and such a practice would be identical with the practice of booking a road show from theatre to theatre. With the case of special feature pictures, which seem to be a recent development, it is the practice to book them for definite dates, and those dates are filled by the booker in exactly the same way as with the regular theatrical business, and the motion picture play is advertised by the theatre in advance, in exactly the same way as the regular road show is advertised.

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Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M., at the same place.

NEW YORK CITY, November 11, 1913.

The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M., November 11, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

3

Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. Mr. Dyer, on what does the value of a motion picture depend? A. That is a rather difficult question to answer, because so many factors enter into the value of the picture. Sometimes the picture is interesting, and therefore, valuable in one section of the country, and is not popular at all in another section of the country. In fact, some of our most popular pictures in some sections can hardly be shown in other sections of the country, but, in a general way, the value of a picture depends upon the interest of the story, the moral that the story teaches, the skill with which the story is told, the clearness, or obviousness of the story, the quality of the acting, the popularity of the actors, or, at least, the star in the play, the quality of the photography, and the steadiness of the picture, are all factors determining its value.

4

1 Q. Does the skill of the acting, or personality of the actor, have anything to do with it? A. Yes, some actors are very popular, although the most popular actors may not be the most skillful. The popular actors seem to have the indefinable quality of taking a good photograph, and making appeals by reason of their inherent magnetism.

2 Q. Does it frequently happen that the cost of a production is so great that the producer cannot sell it with profit on a footage basis merely? A. That is true, and with the recent development of the art it is getting more true than it was formerly. Pictures are very much more expensive to make now than they were in past years.

Q. What would you say as to the maximum cost of a production beyond which the manufacturer or producer could not afford to sell, on a footage basis? A. Based upon present conditions, and having in mind my experiences with the Edison Company, I should say that a picture that cost two dollars per negative foot could be handled with profit, and one that cost two dollars and fifty cents per negative foot would involve a loss. I think the critical point lies between those two extremes.

3 Q. Mr. Dyer, what are the methods now in vogue in the General Film Company in distributing motion pictures handled by it to the exhibiting theatres? I mean now with reference to pictures which are not leased upon a footage basis? A. You mean the General Film Company, or the subjects handled by the General Film Company, or handled by all?

Q. The General Film Company? A. The only picture that I recall, that the General Film Company is handling at the present time, not on a footage basis, is the picture entitled, "From the Manger to the Cross."

4 Q. I did not mean to confine my question in point of time to what was going on today, but what has been its practice with respect to pictures of this class? A. I will ask the Examiner to please read me the last three or four questions.

The following questions and answers were read to the witness:

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ger to the Cross.'

"Q. I did not mean to confine my question in
point of time to what was going on today, but what
has been its practice with respect to pictures of 2
this class?"

A. (continuing): All the pictures that I recall that
have been handled by the General Film Company have
been on a footage basis, except that for a short period, a
year or more ago, it acquired certain multiple reel sub-
jects, by paying the negative cost of the manufacturers, and
I know in one or two instances extra payments to the man-
ufacturers have been made over and above the footage price.
The further exception is "From the Manger to the Cross," 3
which we handled for the Kalem Company, and sold out
the various State rights for most of the States.

Q. These were all cases involving great negative cost,
were they not? A. Yes, sir.

Q. Do you know what the negative cost of the picture
which you have just mentioned, "From the Manger to the
Cross," was? A. It was a very expensive picture, made in
Palestine, and it involved the transporting of a theatrical
company from New York, to Palestine, and return, with
some properties. I have been told that the picture cost
twenty-five thousand dollars, and I have no reason to 4
doubt the correctness of this statement.

Q. You mean that the taking of the negative cost that
amount of money? A. Yes, sir.

Q. Was the picture entitled "Quo Vadis," handled by
the General Film Company? A. No, sir, it was handled by
Mr. Kleine personally.

Q. Well, in the case of an ordinary motion picture
which is sold or leased upon a footage basis, what is it that
determines the income that the producer may receive from
such pictures? A. The number of prints he may be able

1 to sell, multiplied by the number of feet, multiplied by the cost per foot.

Q. What do you mean by the expression, "negative cost?" A. The negative cost is the cost of making the negative. That is to say, the cost of the negative film, cost of the actors directly employed in the play, the proportion of the actors' salaries chargeable to the particular play, salary of the director and camera man, cost of scenery and properties, the cost of electric light, travelling expenses of actors, and the proportion of general expenses attributable to the particular play.

2 Q. Does it frequently happen that in producing successive scenes of the same motion picture drama it is necessary to transport a company of actors to points greatly distant from the studio where the first scene, or some of the scenes are taken? A. Yes, this is very common, and in fact necessary. It is a very common thing for the producers to send companies of actors to the Adirondacks, and to Maine, for the purpose of taking Klondike pictures, and they are shifting around all the time to find suitable locations where outside door scenes can be taken.

3 Q. For instance, if Mr. Selig, or Mr. Spoor, in Chicago, were producing a picture where one of the scenes takes place on board a trans-Atlantic liner, would it be necessary for him to transport his company from Chicago to New York for that purpose? A. Possibly not in that case, for there are very large vessels on the Great Lakes that might be satisfactory as representations of an Atlantic steamer, but other illustrations might be given where a company would be transported over very long distances. For instance, the daily papers of two or three days ago spoke about the taking of a picture called "Soldiers of
4 Fortune" that necessitated the sending of a company to Santiago de Cuba.

Q. Is that a dramatization of Richard Harding Davis' story entitled "Soldiers of Fortune"? A. So I understand.

Q. Does the necessity, though, of transporting a company of actors from place to place constitute quite a factor in the negative cost? A. Yes, it is likely to be a considerable expense; and another expense that, perhaps, you have not considered is the waste of time—a com-

pany for instance might go up to Maine for the purpose of taking two or three scenes in a play, and be stormbound for a week or so, and not be able to take those scenes until the sun came out. Frequently companies are loafing around for days at a time, without being able to do anything in the way of results, or rather get anything in the way of results.

Q. Then the position of a motion picture producer who has taken his negative is somewhat analogous, is it not, to a magazine publisher when he has the type all set up and ready for printing? A. Yes, I think the analogy is very close.

Q. If the producer manages to dispose of only one positive, the entire negative cost is charged on that positive, of course, is it not? A. Yes.

Q. And his profit depends entirely on the number of prints he may dispose of of a given picture? A. That is correct, and very slight fluctuations in the number of prints are of importance. For instance, if, under present conditions, it is necessary for the producer to sell thirty prints of a subject in order to cover the negative cost,—then if he sold twenty-nine prints he would lose money, and if he sold thirty-one prints he would make money, and yet the difference between twenty-nine and thirty-one, perhaps, superficially considered, would not appear important.

Q. Would you say then that the production of a motion picture play involved many speculative matters? A. The art is highly speculative. The producer might calculate the cost of a negative, and find that he was two or three hundred per cent out of the way—the same element of speculation that is present in the regular theatrical business,—because it is known that more plays are failures than those that succeed.

Q. Does it frequently happen that a motion picture play which has been produced at great expense is a total failure with the public, just as in the regular theatrical business? A. Yes, sir; some pictures are looked upon by theatres as of so little interest that they refuse to run them, and try to change them for something else.

Q. What is the average duration of the performance of a motion picture play? A. A single play contained on one

1 reel would occupy about fifteen minutes of time, but this varies, of course, according to the speed with which, or at which, it is run through the machine. Fifteen minutes is about the normal time.

Q. How many plays are usually given at one performance? A. Generally three or four; sometimes as high as seven or eight.

Q. In the case of a motion picture play involving four to eight reels, as is sometimes the case, what is the length of the performance? A. From one to two hours.

2 Q. Does it frequently happen that a performance is entirely devoted to the production of a single play, or the exhibition of a single play, just as on the regular dramatic stage? A. That is the form of entertainment that is apparently developing in this country.

Q. Has the tendency been in recent years to lengthen the performances in the regular motion picture theatres? A. Yes, it has. In the early days it was quite customary to run only a single reel, and this was generally cut in two on Saturdays so as to keep the audience moving. These were the days when the pictures were shown largely as matters of novelty.

3 Q. For how long a time is the same picture shown, or the same play shown in the same theatre? A. Generally a picture is run only one day, but in some localities sometimes it is run for two or three days.

Q. Taking into consideration, therefore, the short time which an exhibitor makes use of a play, would it be financially practicable for him to obtain these pictures direct from the producer? A. No, sir, not when you take also into consideration the fact that he only gets five or ten cents admission.

4 Q. Have you found that the exhibitor objects to the production of a play which has been produced in a neighboring theatre only a short time before, or concurrently with the production at his own theatre? A. Yes, he does object to this. This is called "repeating," or, in the case of where a programme, or substantially the same programme is simultaneously shown in two neighboring theatres it is called "conflicting," a conflicting program. I think that exhibitors without exception are very much opposed to repeating and conflicting programs. They say that if a pic-

ture has been shown in their competitor's theatre before it gets to them it has lost its drawing power. 1

Q. And that objection is based on the unwillingness of the public to see the same play a second time, is it not? A. Yes, sir.

Q. Well, does the length of time which any given copy has been in use affect the desirability of the picture from the standpoint of an exhibitor even though it may not have been shown in his own town or neighborhood? A. Yes, the theatres, of course, try to get the pictures at as early runs as possible; and they also object to pictures which have been worn or injured by previous exhibitions. 2

Q. Explain what is meant by "release date" in the motion picture business? A. Release date is the date set by the producer on which it is released for exhibition. Release dates are used in cases of magazines, and we also use release dates in connection with the phonograph business, refusing to allow jobbers or dealers to ship them out of their stock before 8 A. M. of the release date. The release date rule was introduced for the purpose of preventing unfair practices on the part of exchanges, so that one exchange, if it should accidentally come into possession of a picture before its competitor, would not thereby have an advantage over his competitor. Release date is not particularly important under the conditions of the General Film Company, except as a means for determining on the value of the service,—so that a theatre will be able to tell whether it is getting a first-run reel, if it is paying for first-run service. 3

Q. I think one of the witnesses for the petitioner has testified that the release date rule originated with the Patents Company. Is that correct? A. No. I am quite sure that under the Edison licenses the films were released on definite release dates, and I believe that some of the producers were using release dates before the time of the Edison licenses. 4

Q. And the release date rule was a trade custom long established and well established in the business prior to the organization of the Patents Company? A. Yes.

Q. A trade custom? A. Yes.

Q. In this connection, Mr. Dyer, I would like to ask you if you happen to know whether your competitors have

1 a release date rule? A. They have, the same as we have.

Q. That rule is regarded of considerable importance, is it not, by the manufacturers? A. I think so. It enables the value of service to be accurately measured. If a theatre is paying for first-run service and gets a picture on the date of release advertised in the trade papers he knows he is getting what he pays for, but if we didn't have the release date we probably would have arguments all the time in convincing theatres that we were giving them the films that they had contracted for.

2 Q. Would a violation of that rule, even of so much as a quarter or half an hour at times work injury in the business? A. Yes. Any violation would be likely to work injury, and, of course, if you have a rule you have to enforce it, and a violation to the extent of a quarter or half an hour is as bad as a violation of two or three days. I recall that during the time that we were in competition with the Kinetograph Company, in Atlanta, last Spring, we had a very important customer in Chattanooga, who was taking our complete output in three theatres, and the Kinetograph Company had a single customer there who
3 was using the same output in his theatres, showing the entire licensed output. The films ordinarily left Atlanta by a train leaving about 8:30. There was a train called the Dixie Flyer, that reached Atlanta at 7:50, but neither of us was able to get our films on that train.

Q. What is the release date hour? A. The release date hour is eight o'clock. They were somewhat sharper than we were, and kept track of this Flyer, and on two or three mornings when it was about half an hour late, they managed to get their films on the train, and reached Chattanooga two or three hours before we did, so that their theatre was able to show films in advance of ours. This was
4 not a violation of the release date rule, but shows the importance of fifteen minutes or an hour's leeway in this business.

Q. Who is it that determines the length of the program, and the frequency with which it is changed? A. The theatres in a given locality generally co-operate together and use programs of substantially the same length, and with the same changes per week. That is to say, in some localities the films would be changed every day, and in

others they may change two or three times a week. This seems to be a matter that the theatres regulate themselves. Therefore when a theatre owner comes to one of our branches for service he generally requires service that will enable him to compete on an equality with his competitors.

Q. Will you explain what is meant by "first run," "second run," and "third run," etc., in the business? A. Ordinarily a first-run film is a film that is shown on its release date. A second-run film is shown the day after release date, and so on; but in some localities the exhibition of a first-run film means a film that is shown for the first time in that locality. Thus, for example, in Jacksonville, Florida, a first-run film, as I remember it, is about a week old.

Q. Isn't one of the chief problems of an exchange to keep all of its pictures in constant use? A. That is the principal object of an exchange because it is necessary that the films should be kept at all times in as continuous use as possible with minimum periods of idleness. When a film is idle, and lying on a shelf in an exchange, it is not earning anything. The film business, or rather the exchange business, is a business with tremendous depreciation. It is like the ice business, because the value of the product is melting away every day. The greatest value of the film is in the early runs, and it is particularly important to have no blank spaces on the books indicating dates of idleness, particularly in the early runs of the films. This problem would not be difficult with only one film, but when each exchange is buying from thirty to ninety reels per week, and has stocks on hand of thousands and thousands of films, and is supplying from a hundred to three hundred customers, and each customer is taking a service of from twenty-one to fifty reels per week, and the service is changed from every day to two or three times a week, the problem is exceedingly difficult to keep the films always in use, and the successful film manager, or exchange manager, rather, is the one who will get the maximum use out of the largest number of films at all times. If the periods of idleness are considerable, then the expense to the exchange is high, and the price of service to the exhibitor is necessarily higher. So that the object of the business is to try to keep the films busy at all times, so that the cost of the service may be kept as low as possible.

- 1 Q. So if a picture is idle on the second day after its release, that is to say, is not exhibited anywhere, will a theatre give as much for that picture on the third day following its release as it would the second day, it not having been shown but once before? A. No. The theatre is not interested in our troubles. He does not care whether we rent it on the second day or not.

Q. What would represent a fair average of the cost to the exhibitor of a first-day picture?

- 2 Mr. GROSVENOR: Are you talking about here in New York City or in some small country town?

Mr. CALDWELL: I will say in New York City.

The Witness: The cost in New York at the present time is about seven dollars per day.

By Mr. CALDWELL:

Q. And for the second day run? A. I think, about five dollars, but I do not keep those figures in memory. It is all subject to competitive conditions.

- 3 Q. Then, in New York City a theatre taking a picture which was idle on the second day would not be willing to pay five dollars for it? A. Not the second day price. He pays the price he agreed to pay. He does not make his agreement for a third-run picture with any knowledge of whether the picture will be shown for the second time, or whether it will be shown at all on the second day.

Q. Then the periods of idleness of any given picture represent an absolute loss to the exchange? A. Exactly; the same as when a day laborer is incapacitated by rheumatism, he does not earn anything the day he is not working.

- 4 Q. What relation is there, if any, between the number of customers served by an exchange, and the cost of the service to a customer? A. It is, of course, desirable that there should be as many customers as can be handled with the available supply of films, so there will be minimum periods of idleness, because in this way the service is handled at its maximum efficiency, and the price of the service may therefore be low. If there are few customers, and considerable periods of idleness of the films, the expense of the service is

proportionately increased and the cost to the exhibitor is likewise higher. 1

Q. Can a single exchange supplying a given territory supply a better and cheaper service to the exhibitor than if that same territory was served by two or more exchanges?

A. Yes, sir; I think so.

Q. Why? A. I think it is the universal experience in almost every business that a single unit can give a cheaper service than two small units whose aggregate size is equal to that of the large unit. The small exchanges would have proportionately high expenses; each would have to have a manager, and the number of employees required to run two small exchanges would be more than would be required to run a single large exchange. I believe, also, that with two small exchanges the periods of idleness of the films would in the aggregate be more than with a single large exchange, so that the service would be less efficient. 2

Q. You have already explained what is meant by a repeating program. What is meant by a conflicting program?

A. That is where repeating takes place to an aggravated extent, where substantially the same program, or at least the principal films of the program, are simultaneously shown in two competitive theatres. This was one of the evils that was corrected by the General Film Company. 3

Q. Doesn't it usually happen, though, where two or more exchanges serving the same territory are obtaining their pictures from a common source of supply? A. That was the practice. Even at the present time, with branches of the General Film Company located in a single territory, as, for example, Chicago, we have from time to time trouble from this source, although those branches are under one common control.

Q. That is considered an evil in your business, and which you promptly correct whenever your attention is called to it? A. Absolutely. It is a source of great evil, and whenever it happens it results in a loss of business. 4

Q. Do you consider it desirable, from the standpoint of the exhibitor, that each exchange in a given territory should limit itself to the productions of a given number or group of producers whose pictures may not be obtained by any other exchange in that territory? A. Yes, sir; I think that is the only way the business can be effectively handled. It is necessary that the danger of conflicting programs should

1 be removed. If there were two or more exchanges supplying
service in the same neighborhood, there would always be the
danger of conflicting programs. In fact, before conflicting
programs were eliminated, a theatre having picked a certain
film was afraid to advertise it, because he knew that if he did
his competitor would probably get the same picture from
some other exchange and show it in advance of his advertised
date, so as to take advantage of his advertising expense.
2 This is not supposition, but at one time was a very real evil,
so that as a result of it the theatres never advertised their
films in advance, and the audience never knew what they
were going to see until they came down to the theatre on the
night of the exhibition. At the present time, without con-
flicting programs, a theatre is able to advertise its program
two days to a week in advance, and, in fact, it is quite a com-
mon thing for theatres nowadays to get out printed programs
giving their entire shows for all the week, so that people can
go on a certain night and see a particular picture.

3 Q. Is it considered just as objectionable that the same
motion picture be exhibited in two theatres in the same town
or in the same neighborhood on the same night, as would be
the giving of two performances of a regular play, "Within
the Law," for instance, in two neighboring theatres, or in
two theatres in the same town on the same night? A. It is
considerably more objectionable, for the reason that a good
many patrons of picture shows are called "Moving Picture
Fans," who occupy the same relation to the picture business
that baseball fans do to the baseball profession. They go to
two or three moving picture shows every night, and in the
case of a theatrical performance of "Within the Law," that
could be seen, of course, only once by any one person, whereas
that person could go to two moving picture shows the same
4 evening. Therefore, if the two moving picture shows gave
the same program, he would only go to one, whereas if they
had different programs, many patrons go to both.

Q. What is meant by special feature films? A. At first,
all the films made, or practically all of them, were in one
reel. Then, beginning, I think, early in 1912, and follow-
ing the lead of the European producers, American pro-
ducers began to make multiple reel subjects in two or
three reels. At first these multiple reel subjects were
generally a single reel subject stretched out to two reels

by putting in superfluous scenes, or lengthening out necessary scenes, but later on the character of the subjects began to justify the length, and they became quite popular. These at the time, were called special feature subjects, and they were put out to the exhibitor at an extra price, but afterwards they came to be included in the regular program, as part of the regular output, and these are not called special feature subjects any more. At the present time, a special feature subject is a subject generally of sufficient interest to make a special appeal to the patrons of a theatre, and preferably of sufficient interest to permit the theatre to raise its price of admission. It may be only a single reel, but that reel might possess extraordinary interest, as, for example, views of some person very difficult to photograph, like the German Emperor, or possibly scenes of an actual battlefield, from the late Balkan War. A special feature subject at the present time is also one of from four reels or more in length, specially finely made, and preferably with some well known stars in it, as for example, "Quo Vadis."

Q. Mr. Dyer, I show you here, the manuscript of a motion picture play, or scenario, entitled, "Agnes," and will ask you whether that is fairly illustrative of the better class of motion picture drama, as now shown on the motion picture stage? A. Yes, I would consider this the scenario of a special feature film.

Q. I do not want to encumber the record by offering that in evidence, but I would ask you to describe, for the purposes of the record, just what that scenario is. What it comprises.

Mr. GROSVENOR: Has this been gotten out by anybody?

The Witness: The Vitagraph Company.

Mr. GROSVENOR: Then it has already been published?

The Witness: It has been made, but it has not been released as yet. Or at least, it is undergoing production at the present time. It has not been finished.

1 Mr. GROSVENOR: Has it been advertised yet for
release?

The Witness: Not that I know of.

By Mr. CALDWELL:

Q. Will you proceed? A. The scenario or play is in
four parts, each part intended to occupy a reel of a thou-
sant feet. At the beginning of each part, is a brief synop-
2 sis of the action, or story, to be told, so as to give the
director a general idea of the plot he is expected to portray.
Then follows the cast of characters, so that the director will
know how many actors to assign to the play, and the parts
they are to take. Then follows a list of props, so that he
may be advised as to what to look out for in connection
with this particular detail. Then follows a list of the
scenes. On the first reel of this picture, there are twenty-
eight scenes, which, of course, would be impossible with a
regular theatrical performance, but becomes possible on
account of the extreme flexibility of the motion picture play.
3 Altogether there are sixteen sets in which these twenty-eight
scenes take place. For instance, one set represents the
library in the Belgradin home, in which eight of the scenes
take place. Following this is a description of the action
to be portrayed by each actor in each of the scenes, and
from time to time certain words appear, which the actors
are required to speak. For instance, in the fourth scene,
the mother meeting her daughter, says, "Wherever have you
been?" In the seventh scene, Agnes says, "Wasn't it splen-
did?" And so on. The other parts are of the same gen-
eral character, and I need not specifically refer to them,
except to call attention to the fact that for the second reel
4 one of the properties required is a steam yacht, which, of
course, could not possibly be used on the regular stage.
Altogether, this play required about sixty pages of type-
writing, merely for the stage directions to the director.

Mr. GROSVENOR: I want to ask one or two ques-
tions for the purpose of making objection. You did
not get up this scenario, and it was not gotten up by
your company, was it?

The Witness: My company is not interested in the production of plays. 1

Mr. GROSVENOR: Then you had nothing to do with getting it up, did you?

The Witness: I did not.

Mr. GROSVENOR: I object to all this testimony about this scenario, the witness not being properly qualified. 2

Mr. CALDWELL: My question was whether that was fairly representative of the better class of motion pictures in vogue today, and he said that it was. He is the executive head of the General Film Company, one of the largest distributors of motion picture plays to theatres, and is in direct touch with the exhibiting theatres, and, I think, is therefore qualified to say whether this is a fairly representative motion picture drama.

Mr. GROSVENOR: I object to all this testimony as immaterial. 3

By Mr. CALDWELL:

Q. Mr. Dyer, the General Film Company deals in projecting machines, does it not? A. Yes, sir, it acts as dealer for most of the standard makes of projecting machines.

Q. What percentage of the revenues of the General Film Company, gross revenues, is derived from the sale of projecting machines, as compared with its revenues from the distribution of motion pictures? I am not asking you for exact figures, but approximately? A. Probably less than two per cent. 4

Q. Then the projecting machine business is a negligible quantity as compared to the gross volume of your business, is it not? A. Yes, sir.

Q. It is merely incidental, is it not, to your main business, that is, of supplying motion picture dramas to public theatres? A. Yes. We carry a line of machines so as to make sales when customers come into our exchanges,

1 largely as a matter of accommodation to them. Generally in every locality where we have a branch, there are other dealers in machines who make quite extensive selling efforts, to dispose of them.

Q. There is only one of the defendants in this case that either makes or sell projecting machines, isn't that true? A. Either makes or sells?

Q. Makes or sells projecting machines? A. The General Film Company sell.

2 Q. I mean now, of the so-called licensed manufacturers or producers? A. Yes, sir. The Edison Company is the only concern that makes or sells projecting machines.

Q. While you were connected with the Edison Company, was there any agreement or understanding with any other manufacturer of projecting machines as to the prices for machines? A. No, sir.

Q. And at what time were you connected with the Edison Company, Mr. Dyer? A. From April 1st, 1903, to December, 1912.

3 Q. Was any price of projecting machines ever set by the Edison Company, as a result of the license agreement with the Patents Company, or as a result of any conference, agreement or understanding with anyone outside of the Edison Company? A. No, sir. The only thing done by the Edison Company as a result of the license agreement was to withdraw a very cheap machine, known as the "Universal," which it was selling for \$75, and which was not a popular machine. It was a very cheap machine, and its sales would have been discontinued anyway, even if the license had not included the restriction requiring us to withdraw it. The art had developed beyond that type of machine, in fact, the art is developing now, I think, to-
4 wards better and better machines, and I presume the future will see more expensive machines than the past. The cost of a machine is very small, compared to the other investments that the theatre has to make, and the perfect operation of a machine is a very important factor in the success of a show, so that it would be poor economy for a theatre to economize by putting in a cheap machine.

Q. State what connection you had with the formation of the General Film Company? A. I did not have a very

active connection with the formation of the General Film Company, except to discuss the question from time to time with the several licensees, when we were considering the possibility of starting a distributing concern. This was shortly before the company was actually founded. I was quite opposed to the plan of starting a concern that would compete with our customers, because I was afraid that we would alienate their support and drive them away from us. I had had some experience along this very line in the phonograph business. The phonograph business, as I said yesterday, at the beginning of the Edison licensee arrangement, was larger than the combined business of all the motion picture producers, that is to say, the National Phonograph Company was doing a larger business than all the motion picture producers who were licensed, and that was my principal work, looking after the affairs of that concern. Now, the National Phonograph Company had been operating under licenses in connection with phonographs and records, and had licensed jobbers and dealers in very much the same way as the licensees in this case, and we had about thirteen thousand dealers who were licensed. We did all of our distributing through independent jobbers, and those jobbers in turn dealt with the dealers, and it had always been an axiom with the Edison Company, that it must not in any way interfere or compete with their customers, so as to always retain them, and have their support.

Mr. GROSVENOR: By the customers, you mean the jobbers?

The Witness: I mean the jobbers.

Mr. GROSVENOR: And by the customers in the other line of business, you mean the rental exchanges?

The Witness: The rental exchanges.

A. The Columbia Phonograph Company was a competitor of the National Phonograph Company, and in addition to being a manufacturer of phonographs and rec-

- 1 ords, they tried to deal through jobbers, and at the same time established stores all over the country, from which they made wholesale and retail sales, and they were not able to build up very much of a business, because the dealers and jobbers would not patronize them, because they felt that they were interfering in their fields, and we were able to build up a very large business by dealing with the jobbers in this way. So that I was opposed to the plan of starting this exchange, and agreed to it only after having been convinced that it was a commercial necessity to do so, and after the plan was approved of, the gradual
- 2 carrying out of the plan was turned over to Mr. Kennedy, who started the company and put it on its feet. He seemed to be perfectly willing to do this, and as far as I was concerned, I was entirely willing to let him undertake the work, so that my connection with the company was not any further than to approve the plan, after having discussed it with the several manufacturers, and co-operating with them as loyally as I could.

By Mr. CALDWELL:

- 3 Q. Do you know whether the other licensed manufacturers and importers, or any of them, entered into this plan with reluctance?

Mr. GROSVENOR: I object to that as calling for improper testimony. The way to prove any such thing, of course, is to call these other manufacturers or producers, and not to ask about discussions.

By Mr. CALDWELL:

- 4 Q. You may answer the question, yes or no. A. Yes. That seemed to be the opinions of most of them.

Q. Did you have any discussions with any of them on the subject? A. Oh, yes. My answer was based upon what I had gathered from my discussions with them. They had about the same views that I had, and I think they went into the plan with great reluctance, and with the feeling that the chances of failure were probably much greater than the chances of success.

Q. Was it started more or less as an experiment? A. 1
Why, yes, in the sense that the chances of a failure seemed to be greater than the chances of success, I would call it an experiment.

Q. Did any of the manufacturers assign any reason for their reluctance to enter the exchange business?

MR. GROSVENOR: I object to that as calling for hearsay.

A. Yes, I have already explained that we were dealing 2
with a large number of exchanges, and that was the principal reason for the feeling of reluctance on the part of the several producers that if they should begin to compete with their customers, they might alienate their support.

Q. And did they fear a loss of market in the leasing of their film? A. That would naturally be the result, yes, sir. That is why they were afraid; afraid it would hurt the business.

Q. Was it supposed at the time that any profits that they might make in the exchange business would offset possible or probable losses in their leasing of film? A. I 3
think they were all hopeful that some profit might be made in the exchange business, but I do not think they felt very sure about it. But of course, their idea was, or at least my idea was, if any profits were made, they would offset to a certain extent any loss that we might incur by losing the support of the customers that we were supplying with film.

Q. The petitioner sought to show in this case that the organizers of the General Film Company, prior to its formation, made an estimate of the value of all licensed exchanges in the country, and that a schedule of prices was 4
prepared, which they would be willing to pay for these exchanges, and that the General Film Company at its inception, was formed for the purpose of acquiring all of these exchanges. Do you know anything about any such estimate or schedule? A. No, sir, I do not.

Q. Was it the purpose of the General Film Company at the time of its formation, or even shortly after its formation, to acquire all the existing rental exchanges? A. No,

1 sir. The purpose of the General Film Company, at least as I understand it, was to provide a source of distribution for the licensed film that could be started in any territories where the conditions seemed to be peculiarly dangerous, and where such an exchange was desirable. It was designed to represent what an exchange should be, so as to show other exchanges how to handle the business.

Q. State what part, if any, you took in the negotiations for the purchase of property from any of the licensed exchanges prior to, say, January 1st, 1912? A. I took no part in any such negotiations.

2 Q. Was any threat ever made by you or to your knowledge by any other officer or director of the General Film Company to any exchange that if it refused to sell its business, its license would be cancelled by the Motion Picture Patents Company? A. No, sir.

Q. Did you, as an officer of the Patents Company, or to your knowledge, did any other officer of the Patents Company ever make such a threat? A. No, sir.

3 Q. Did you, or did, to your knowledge, any other officer, agent or representative of the General Film Company state to any exchange owner, officer, agent or representative of any exchange, that if such exchange did not sell out to the General Film Company, the General Film Company would establish a competing branch? A. No, sir.

4 Q. What is it, Mr. Dyer, that regulates the cost of service to the exhibitor? A. The film distribution business is subject to so many changes and variations that it is not possible to make any price of service on any percentage of cost as is the case with standard articles, and particularly articles where the depreciation is slight. The expense to the exchange, as I have already stated, is also subject to great variations, due to the periods of idleness in the working of the film, and it is the object of every exchange to try to keep these periods as far apart as possible. Ordinarily the price of service is the best price we can get, and the best price the exhibitor is willing to pay for the goods we sell him. In every locality where we are located, we are subjected to competition of other exchanges, so that these prices are strictly competitive prices. I might say that, considering the total business of the General Film Company, it is conducted on a basis of about twelve per

cent. for general expense, that is to say, the general expenses of the company amount to about twelve per cent. of its gross receipts, which I think is not unduly high for a concern of this kind, especially when the speculative factors are considered. Its profits are about ten per cent. of its gross sales, which I think is also a reasonable profit. The film business in this country is a very highly competitive business. It has been estimated that the entire receipts of the theatres amount to about three hundred and fifty millions of dollars per year, and on this basis the cost of the service averages less than ten per cent., that is to say, the theatres on an average pay ten per cent. of their gross receipts for the shows that bring them in all the money they get. In the regular theatrical business, the percentage generally varies from forty to seventy-five per cent. of the gross receipts, or from four to seven times as much as in the motion picture business.

Q. Do you know whether or not the cost of service to the exhibitor was increased after the formation of the General Film Company? A. Our records show that the average price per customer is almost exactly the same now as it was in 1911, and since that time a great many large, new theatres have been built, that pay a great deal for service, so that I am certain that for the large bulk, probably 90 per cent. of our customers, there has been a very substantial reduction in the average service charge. More than this, the quality of the motion picture plays we have been supplying to these theatres has very materially increased, so that theatres are getting much greater value for their money. We have also increased the number of plays produced per week, handled by the General Film Company, so that the price of service, per release, has been very greatly reduced. We are making more subjects for our customers, now, than ever before, without increasing the price.

Q. Who is it that fixes the price of service to the exhibitor, the branch manager of the General Film Company, or the main office of the General Film Company? A. The price of service is fixed as a matter of bargain and sale, between the branch manager and customer. We have little or no control over this. With a business of the size of the

- 1 General Film Company, it is necessary that the branch manager should have considerable latitude in determining questions of price, because if these questions were referred to the home office, the complications would be interminable. The branch managers run their branches with as little trouble and dictation from the home office as possible. In fact, the only dictation they receive from the home office is in connection with matters of policy. Each branch manager is running his exchange as far as he can, practically as an independent business, and under competitive conditions, is making the best showing he can for his
- 2 branch.

- Q. What is the practice of the various branches in preparing a program for its customers? A. Ordinarily the programs are prepared by the branch manager, or rather, by the booker or bookers, having in mind the service contracted for. If, however, the program of any particular day is not properly balanced, that is to say, if it contains, for instance, three dramas, the theatre generally asks to have it changed, by substituting a comedy for one of the dramas. In some of the branches, we have booking systems that give to the theatres certain definite makes of films on certain definite dates, and while this gives variety in connection with brands or makes, it does not give variety in connection with subjects, and here again, we have to make adjustments all the time to balance up programs. This is one of the great problems of the branch manager, trying to satisfy so many customers. In some localities, such as Boston, the theatres indicate to the branch manager a list of films from which they wish to have their programs selected. That is to say, if a theatre is entitled to three reels on a given day, he will give the
- 3 branch manager a list of six subjects, and ask to have the three reels selected out of the six subjects suggested by the exhibitor, and this is done as much as possible. Then, in almost every branch, there are a few customers who take a great deal of interest in the selection of their programs, and these people can be seen hanging around the booker's desk, trying to pick out certain films that they want, but in a very large majority of cases, the programs are selected by the bookers, who are skilful men, and who try their best to give to the theatres a satisfactory, inter-
- 4

esting, and well-balanced program. And they try as far as they can to carry out the wishes of the exhibitors in connection with the character of the reels furnished to the exhibitor. Some exhibitors, for example, like to have educational films, and we try to let them have them. 1

Q. Is it your experience that for the most part the exhibitor prefers the branch manager to make up the program for him? A. Yes, I think so. The exhibitor does not pay very much attention to this question, and he has been getting satisfactory service, and knows the programs furnished by the branch manager will be acceptable, and he is perfectly willing to be relieved of the duty of picking out his programs himself. We do not have many complaints, when you consider the large number of theatres that we supply service to—the complaints are really very small. 2

Q. Is it within the power of the General Film Company to satisfy the wishes of an exhibitor with respect to the choice of program, to a greater extent than when there were many licensed exchanges in the field? A. Yes, I think that is so, because the General Film Company has a much greater variety of films to make the selections from than would be the case with a large number of small units. 3

Q. Do you happen to know whether the same system of preparation of program by the exchange is followed by the unlicensed exchanges in their dealings with their customers? A. Yes, sir, the General Film Company, having pointed out the way to do the business in a businesslike manner, has been followed by its competitors.

Q. Was this selection of program by the exchange, a trade custom more or less followed even prior to the Edison licensing arrangement? A. Yes, sir, it all grew out of the early conditions, where the demand for film by exhibitors was so great that they took anything they could get. Anything that was a picture was sufficient for their purpose, because the pictures were looked upon solely on the grounds of novelty, and, I presume, the continuance of the branch manager in sending out programs is simply an outgrowth of this early custom. That is to say, the theatres never did select the programs, and do so now, as I said, only in a very few cases. 4

Q. Who is it that determines what pictures shall be ordered for each branch of the General Film Company? A.

- 1 The branch manager of each branch has the unlimited discretion of ordering such pictures as in his judgment may meet the public demand in the territory supplied by him. In other words, so far as buying the film is concerned, the branch manager is independent of the home office, and acts exactly with the same freedom that he would have if he owned the business himself.

- 2 Q. If the branch manager finds that there is a greater demand in his territory for pictures turned out by a certain licensed producer, than there is of the pictures of other licensed producers, is he at liberty to order the pictures that are most popular with his patrons, or is he compelled to take the pictures of all of the licensed producers? A. He is not only at liberty to order these pictures that are demanded, but he is expected to do so, and as a result of this independence of action on the part of the branch managers, the orders for the several pictures of the licensed manufacturers vary as much as three hundred per cent. or more; that is to say, some reels will sell to the extent of three hundred per cent. more than other reels.

- 3 Q. Have you stated why the simultaneous service by two or more licensed exchanges in the same territory prevents the theatre from advertising its program in advance? A. Yes, sir, I have explained that. The old practice was for the theatres to conceal the programs, so that their competitors would not get the same programs, and take advantage of their advertising expense. I might say that even at the present time when we have booked a theatre with a certain film, we sometimes have the competitor, who may be getting service from us, come to our branch and try to get us to give him the particular film that the other theatre has advertised, and they seem to have great difficulty in understanding why we should refuse to let them have it.

4 Q. In what manner does the exhibiting theatre announce its program or advertise it in advance? What are the different methods? A. Sometimes they would issue a very nicely gotten up little program that will give all the shows for the entire week, as I have stated before. Then, it is very common for theatres to get posters in advance of the pictures that are coming on later, and put these posters in their lobbies, so that their patrons will see what to expect

later on. Then, the theatres are getting in the way of advertising in the daily papers to a greater or less extent, and it is quite a common thing for theatres to make use of heralds or hand bills, announcing the giving of a certain motion picture play on a certain day, and in the case of the large theatres, bill-posting is quite extensively used, just like the bill-posting in connection with a regular dramatic performance. 1

Q. Does the General Film Company supply these posters to any of its customers? What is the practice in that regard? A. The posters are printed by regular lithographing concerns, and sold generally to people who want them, but we maintain in a great many of our branches, poster departments, where we keep a supply of posters, which we rent or sell to exhibitors either simultaneously with the films, or beforehand, so that they can announce the films in advance. Then, in some places there are separate poster companies that maintain offices in the neighborhood of our branches, and who deal with the poster business exclusively, or compete with us. In Chicago, a separate poster company maintains quarters in all three of our branches, and does the entire poster business for those branches. I think, to a limited extent, some of the larger theatres obtain posters direct from the lithographers who make them. 2 3

Q. Do the producers of the pictures sometimes supply posters? A. Not ordinarily, but I think in the case of "From the Manger to the Cross," the Kalem Company did.

Q. Do they supply the cuts to the lithographer from which the lithographer makes the poster? A. Certainly. The producer of the play furnishes the necessary photographs to the lithographer, in order that the lithographer may make up the posters of the various sizes.

Q. Whatever business the General Film Company does in posters is merely a matter of convenience, is it not, to its customers? A. Very largely so. It is a very small matter. In fact, it generally causes more trouble than it is worth, but it is desirable to have the posters for the customers, so as to let them get them from our branches if they want them. 4

Mr. GROSVENOR: I wish to notify counsel for the defendants to please produce, when Mr. Marvin ap-

- 1 appears for cross examination, all letters written by
the Patents Company in response to the letters ad-
dressed to the Patents Company, and which were
introduced by counsel for the defendants during
their direct examination of Mr. Marvin, these letters
being from various exhibitors and rental exchanges,
the production of the letters written by the Patents
Company in response to the other letters being
necessary in order that a full and proper cross ex-
amination may be made in regard to the letters
2 which have already been introduced by the defend-
ants.

Whereupon, at 4:40 P. M., on this 11th day of Novem-
ber, 1913, the hearings are adjourned until Wednesday,
November 12th, 1913, at 10:30 A. M., at the Hotel Man-
hattan, New York City.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889.	2
<i>v.</i>		
MOTION PICTURE PATENTS Co. and others, Defendants.	Sept. Sess., 1912.	

NEW YORK CITY, November 12, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M., November 12, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

- 1 Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

- Q. What is the effect on film of the sprocket holes being torn or enlarged? A. If the sprocket holes are torn on both sides of the film, the film will not feed through the projecting machine, and there will be danger of its being ignited. If the sprocket holes are torn on one side only of the film, it is likely to be fed irregularly through the projecting machine, and ride up on the sprocket teeth, so as to thereby
- 2 stop the feeding movement. If the sprocket holes are enlarged, the successive pictures do not register accurately in the projecting machine, and produce jumping or irregular projections on the screen. Pictures that are projected on the screen, as is well known, are very much enlarged, so that any defect in the machine is correspondingly exaggerated.

Q. Could you state approximately the extent to which the picture on the film is magnified on the screen? A. About ten thousand times.

- Q. So that the slightest variation in the correct position of the film would result in a very poor exhibition? A.
- 3 Yes, sir.

- Q. What is the effect of the film being scratched? A. A scratched film is one in which longitudinal scorings through them cut through the gelatine of the emulsion down to the celluloid base. Light is projected through these scratches, and interferes very materially with the projection. Where the scratch is considerable, as is the case with an old film, the repeated passing of the scratches across the eye give somewhat the appearance of a violent storm of rain, and these pictures were therefore called "rain storms."
- 4 I recall seeing a play in New York written by my cousin, Mrs. Kate Douglas Wiggin, called "Rebecca of Sunnybrook Farm," where this defect was utilized to produce the effect of rain on the stage.

Q. What is the effect on the film of a break or tear necessitating splicing? A. It produces a hiatus in the reproduction. A foot of film, roughly speaking, corresponds to about one second of time. Therefore, if a foot of the film is cut out, a second of time is lost. This is very frequently observed in motion pictures where, for example, a man is

shown walking across the scene, and instantaneously he appears several feet in advance. This is called a "jump," and is the result of a splicing requiring the cutting out of a portion of the film. 1

Q. Does it often happen that the break or tear is longer than a foot? A. Oh, yes. I simply mentioned a foot to indicate the period of time that would be involved. Sometimes several feet would be taken out.

Q. Does it sometimes happen that a picture after a considerable usage loses as much as ten or twenty per cent. of its footage? A. That might happen in special cases, but I think that is rather a high loss. 2

Q. Which would you consider high, ten or twenty? A. I would consider both figures high. I am now speaking, of course, of averages, not of special cases.

Q. You have stated that some of the releases of the licensed producers consist of educational and scientific pictures. In what places are these pictures exhibited other than in the regular motion picture theatres? A. I think all of the manufacturers put out scientific and educational pictures from time to time, and that these pictures are not limited only to certain producers. In addition to the regular motion picture theatres these pictures are shown in private exhibitions, in clubs, various penal institutions, insane asylums, and poor houses. We maintain quite intimate relations with the Navy Department, and supply these and other films to a great many of the American warships. We also supply films for use at the various army posts throughout the country. 3

Q. By "we" you mean the General Film Company? A. I mean the General Film Company. And it is getting to be quite a common thing now for churches to use motion pictures at their social meetings, and in several cases ministers have used motion pictures in connection with their sermons. 4

Q. Are they supplied also to public schools? A. Yes, we also supply pictures to public schools, and to colleges, and other educational institutions.

Q. Does the General Film Company maintain an educational department for the purpose of supplying pictures to public schools, and educational institutions? A. Yes, we maintain an educational department for this purpose, and it is the practice, at least of some of our branches, to

- 1 maintain an educational catalogue of these films that are supplied to people other than the regular theatres.

Q. Mr. Dyer, look at Defendants' Exhibit No. 28, at page 1055 of the record, being a letter addressed to the Motion Picture Patents Company, by the Theatre Film Service Company, of San Francisco. It is signed "Theatre Film Service Co., per A. J. Clapham," who was a witness for the petitioner in this case, and in which letter he calls the attention of the Patents Company to the matter of returning old films, and states that it has been the experience of that exchange (the Theatre Film Service Company) that at least
2 twenty-five per cent. of a film is lost during the seven months of its lease, and in many instances it has been even greater than this, and he goes on to say that "we have figured that we are returning about three reels for every two which we lease, and it strikes us particularly hard in view of the fact that we have no old stock on hand, other than that which is being constantly used," etc. A. Yes, I have read the letter.

Q. In view of the claim by that exchange that twenty-five per cent. of the footage is lost, would you say that ten or twenty per cent. was high after a film has been
3 in constant use for a long period of time? A. Yes, I still think that percentage is high under the present conditions. My answer was based upon my observation of general averages. It might be that some particular exchange was using its films harder than others, or that some subjects were being used to a much greater extent than others, so that these large percentages of waste might be present. I don't think that is true at the present time.

Q. The character or condition of the projecting machine has something to do also, has it not, with the effect on the film, tearing it, etc.? A. Yes, that, and the skill with
4 which the machine is operated.

Q. During the period of the Edison license, and also since the organization of the Motion Picture Patents Company, have you ever known of any demand on the part of a licensed exchange to accumulate a library of so-called educational or scientific subjects? Have you ever heard of such a demand? A. I am not able to speak as to the conditions at the time of the Edison licenses, but the General Film Company has accumulated a library of educational and scientific films in its educational department, and I

think this library was the result of a certain demand, or of, at least, certain opportunities to do business. I know also, in the cases of our Indianapolis and Wabash Avenue branches, the managers have set aside scientific and educational films as a nucleus of a library, and issue their own little educational catalogues for the purpose of developing this business. The educational business, however, is very small compared with the amusement business, and it is not an entirely satisfactory business, because educational bodies are notoriously averse to paying much money for anything. They have to pay for the films, and there is no way of getting any return from the films, as is the case with the amusement side of the business, and, therefore, in the case of educational films, the expense of the service is kept as low as possible.

Q. While you were President of the Patents Company, did you ever hear of a complaint on the part of any licensed exchange that the provisions of the license exchange agreement requiring the return of film operated to prevent the accumulation of such a library? A. No, sir; I never did.

Q. In point of fact does it have such an effect? A. No, sir, in view of the comparatively small number of educational and scientific films with respect to the entire output.

Q. Explain the method of censoring motion pictures? A. So far as licensed films are concerned all the releases of the licensed producers are run off at an exhibition room of the Patents Company, I think, on four days of every week, before a body of censors, generally comprising men and women of various numbers; and the censors notify the manufacturers if any particular picture is objected in whole, or, if they object only to certain parts of the picture, they point out the parts that are objected to, and they also make suggestions before changing the picture in any respect that may be objectionable to them, and those suggestions of the censors are carried out by the manufacturers. That has to do, of course, with the National Board of Censors. There are other censorships in the country, but this National Board is the important body.

Q. Can you state any benefits or advantages resulting to the public from the formation and the operation of the Patents Company? A. Yes. I think the Patents Company was of public benefit inasmuch as it resulted in the

- 1 elimination of endless, or apparently endless litigation, on the subject of patents. It was of benefit to the public, because as a result of the ending the patent litigation, and the bringing about of a condition of quietude, the manufacturers were free to expand and enlarge their plants, improve the quality of the motion picture plays, and increase the number of subjects released. This assured men of capital throughout the country that there would be an available supply of motion pictures for use in the theatres, and, therefore, a great number of large, expensive, and well ventilated theatres were built, some of which were of
- 2 advantage to the public, as these theatres gave the public the opportunity of seeing good, clean, high class, instructive exhibitions under favorable surroundings at an admission price of from five to ten cents. Then, also, the formation of the Patents Company brought about the so-called Board of Censors, and the result of this Board of Censorship was the elimination of objectionable pictures, and a very substantial increase in the tone of the pictures. Of course, the licensed producers did not adopt the suggestions of the National Board of Censorship for altogether altruistic reasons, because it was asking a good deal to expect them to
- 3 agree with a non-official outside board who have the right to condemn or direct the curtailment of pictures that may have cost thousands of dollars to make, but we felt that it was important that the public should feel that the pictures were being independently and honestly censored, so that they would have confidence in our productions. We also were afraid that unless some kind of censorship was encouraged in which the public would have confidence, that various local censorship boards would spring up all over the country, and interfere with the development of the
- 4 business. In recent months several of these boards have developed, and they necessarily impose a tax on the business, which the public has to pay. The Patents Company also was of importance to the public because it brought the best, and at the time substantially all the producers of motion pictures together, in a spirit of friendly co-operation, and the difficulties and troubles encountered by one producer could be more readily remedied by discussing these problems with his competitors than would have been possible if these troubles and difficulties had to be worked out independently of each other. Also, by the bringing about

of this feeling and friendly co-operation among the producers, without in any way affecting the keenness of competitive relations between them, they were able to bring co-operative pressure to bear on the Eastman Kodak Company to improve the quality of the film, and reduce the price, and both of these factors were of public benefit. If there had not been this co-operation, the Eastman Kodak Company could have kept each producer off at arm's length, and probably this development would have been very slow. The Patents Company also were the first, or, at least, one of the first, to realize the necessity of doing away with the showing of pictures in absolutely dark theatres, and it maintained an exhibit at the Patents Company for a long time demonstrating how pictures could be shown in lighted auditoriums, and this work on our part was taken up by the trade papers, and the theatres throughout the country were convinced of the advisability of this reform, so that at the present time, I think, that all, without exception, of the motion picture theatres of the country are now showing pictures under reasonably good conditions of light. At least, we hear no further complaints about immoral practices that at one time were being constantly brought to our attention.

Q. Can you state any benefits or advantages to the exhibiting theatres resulting from the formation and operation of the Patents Company? A. Yes. Without the Patents Company, and under the conditions that existed, for example, at the time of the Edison licenses, every theatre that showed motion pictures necessarily infringed the patents of the Biograph and Armat Companies, and could have been sued for such infringement. The Patents Company gave these theatres immunity from patent suits. The rapid development of the business, after the Patents Company was formed, owing to the fact that the producers were relieved of the doubts concerning patent infringement, resulted in the making of more and better films, so that the theatres, therefore, directly prospered by reason of that fact, and as I stated in my previous answer, a great deal of new capital was invested in the theatrical business and new theatres were built.

Q. Can you state any benefits or advantages to the public resulting from the formation and operation of the General Film Company? A. The formation of the General

- 1 Film Company was of benefit to the public in a good many ways, at least, that is my very firm belief. It provided at its branches a great assortment of motion picture plays, so that the theatres that the public patronized were able to put out better and more varied programs. It inaugurated methods of inspecting and cleaning the films, which resulted in much better, clearer projection on the screen. It enforced the requirement for the return of old film, so that the character of the exhibitions in this respect was improved. It did away absolutely with conflicting programs, so that the public could go from one motion picture theatre to another and see a different program in each house. It minimized the repeating, so that the public would not see probably more than one reel in any program that they may have seen before, and in many localities, they would not even see one reel that had been repeated. It enabled the theatres to have their programs laid out in advance, so that the theatres were able to advertise the programs, and the public knew where they could see a certain picture in a given territory, and on what date, and they went to the motion picture show, therefore, with the same degree of certainty that they went to the ordinary theatrical performance, whereas, under the old conditions, the motion picture entertainment was largely in the manner of a surprise party. And the General Film Company, by reason of its businesslike methods, has been fairly consistent in supplying its programs to the theatres as contracted for, so that the public has not been disappointed in failing to see plays that may have been advertised.
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Q. Has there been any tendency in recent years, on the part of unlicensed competitors, to turn out glaring and sensational posters? A. Yes. That is quite true.

- 4 Q. Did the General Film Company countenance any such movement? A. No. That is really another advantage that I think can be attributed to the General Film Company. We have tried to restrain any pressure from the manufacturers or producers to make glaring and vivid posters. As a matter of fact, a licensed theatre can generally be distinguished from an unlicensed theatre, by reason of the character of the posters. The unlicensed posters were almost always very glaring and vivid and sensational, although in this respect there has been a very decided improvement recently on the part of our competitors. As a

matter of fact, it used to be a very common thing to simply get hold of a lot of glaring and vivid blood-curdling posters and put them out in the lobby to draw the people in, and then have no picture that in any way related to the posters that were being shown. 1

Q. Do you recall that a bulletin was ever issued by the Motion Picture Patents Company on this subject of sensational posters? I hand you here a bulletin entitled, "Exhibitors' Bulletin No. 11," and ask you to read that. A. Yes, this is precisely the thing that I had reference to. Shall I read this into the record? 2

Q. No, you need not read it. You identify that as a bulletin sent out by the Patents Company on this subject on this date, November 21st, 1910? A. Yes, that is the date.

Mr. CALDWELL: I offer it in evidence.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 107," and is as follows:

Defendants' Exhibit No. 107.

MOTION PICTURE PATENTS COMPANY 3

80 Fifth Avenue

New York City

November 21, 1910.

Your attention is directed to the following Bulletin that was sent to Exchanges on November 7th, 1910:

"Legitimate motion pictures are occasionally made the subject of adverse criticism by reason of the use by the exhibitor of sensational and misleading posters that have been prepared without the co-operation or knowledge of the manufacturer of the picture. 4

"Exchanges are notified not to supply any poster for use in connection with any motion picture except posters made with the knowledge and consent of the manufacturer or importer of the motion picture."

From this Bulletin you will note that Licensed Ex-

- 1 changes will hereafter supply only posters that properly illustrate the motion pictures in connection with which they are issued.

The reputation of your own theatre is likely to suffer from the use of misleading posters, and your interests will be safeguarded if you use only posters that are authorized by the makers of the pictures that you exhibit.

MOTION PICTURE PATENTS CO.

2

By Mr. CALDWELL:

- Q. Can you state any benefits and advantages to the exhibitor, resulting from the formation and operation of the General Film Company? A. The organization of the General Film Company has been of very great advantage to the exhibitor. First and foremost, it prevents the conflict of programs, so that a theatre is able to advertise its shows legitimately and without the fear that its competitor will run in the same show at an earlier date. This used to be the curse of the business. Then, the General Film Company also handles its films in such a way that except in very congested localities, repeating is minimized, and when repeating does take place, the effort is made to keep the repeating films back as long as possible, so that they are repeated in a given locality only after a considerable lapse of time. The General Film Company also inaugurated effective inspection and cleaning methods that enabled the theatre to give a better exhibition, which would be more satisfactory to its patrons. We also are able to give service to theatres with the same regularity as a morning newspaper, so that the theatres are always assured of having their shows, and in localities where there are possibilities of delay, such, for example, as in the upper part of New York State, during the Winter months, where trains are sometimes late, and in New England, in the Winter, we always keep on hand at each theatre a supply of reserve reels, so that the theatre will have a show in case the regular show does not arrive. We have been able, or, rather, we have been required by stress of competition, to make
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the prices moderate with theatres, and have very substantially improved the variety of the program, and in many cases, the number of reels in the program, and in all cases the quality of the pictures that constitute the program. 1

Q. Were the Edison producing and importing licensees competing as between themselves, during the year 1908?

A. Yes, sir. They were competing on questions of quality, and so forth, but there was a certain amount of co-operation on matters of trouble and mechanical defects, and factory breakdowns. For instance, if a manufacturer had some trouble in development, instead of having to begin experimenting to find out how his trouble could be remedied, he might find that one of his associates had encountered the same trouble and found the remedy for that trouble. But the competition was very active, as far as the business was concerned. Each one was trying to get as much business as he could. 2

Q. At that time, what was the most popular brand of film being exhibited in this country? In January and February, 1908? A. I think the Pathe pictures were the most popular of them, although the Biograph pictures came into vogue shortly afterwards, and have always been very popular. 3

Q. Then, had Pathe at that time established, so to speak, a standard of good quality? A. Yes, sir. The Pathe pictures were the highest standard known in the art at that time. They were pre-eminent.

Q. And it became the effort of the other licensed producers to reach and surpass, if possible, that standard that had been set by Pathe? A. Yes, sir, both photographically and in all other respects.

Q. Now, if all the licensees lived up to the schedule of minimum prices established by the agreement, in what respects were they competing, and how did such competition manifest itself? A. So far as I know, the producers did live up to minimum prices. Competition manifested itself between the licensees in the form of bulk of sales of goods. If there was a certain minimum price, each producer would try to put the greatest value possible into the film, and the competition was entirely along the lines of trying to sell as many prints of a subject as possible. The licensees were competing in matters of scenarios, they all were trying to get the best 4

- 1 scenarios they could, and there was a very intense competi-
tion even at that time on the question of the price of the
scenarios. Scenario writers would submit scenarios from
one producer to another and get the best price from the one
that was willing to pay the most for it. Then there was
competition in the way of actors, each producer trying to
get the best actors, so that as a result, the price of actors has
very materially increased. When I was President of the
Edison Company in 1908, \$50 or \$75 a week was considered
a very good price to pay for an actor, because he was given
2 employment all the year round, and was able to live with his
family, and did not have to work at nights, the way they have
to do on the regular stage, whereas at the present time, there
are actors who receive from \$500 to \$1,000 a week for their
services. There was competition also on the subject of ad-
vertising, each producer spending a great deal of money in
advertising his films in the trade papers, so as to popularize
them, and create in that way a demand by the public on the
exchanges, so as to require the exchanges to buy particular
brands of films. Then, the producers were sending men,
traveling men, around among the exchanges, urging the ex-
changes to buy their films. Then, the various producers were
3 also sending people around among the various theatres to
talk up their films to the theatres, so that the theatres would
try to get the exchange that was serving the theatre with
service to buy particular makes of films and, so far as I
know, all the methods usually adopted by competitors were
adopted by these particular competitors, to improve their
business in the greatest possible way. Each one was trying
to get on top, and each one was trying to pull the others
down who might be above them. When I speak of prices of
actors, I should also include the salaries of directors, and I
think the salaries of almost all employees in the art have
4 increased by reason of the competitive conditions.

Q. After the formation of the Patents Company, did its
producing and importing licensees compete as between them-
selves? A. Yes, sir, in exactly the same way, the same thing
went on. Each one trying to do the best business possible,
and first one would go on top and then another. They kept
this competition up. There was absolutely no understanding
or agreement among the manufacturers that there should be
any division of the business. Each one tried to get as much
as he could.

Q. This competition between manufacturers,—did it continue after the formation of the General Film Company?

A. Yes, sir, it goes on in exactly the same way.

Q. And is that condition true today? A. It is.

Q. This competition for high-salaried actors and for the production of motion picture of great, rare, artistic merit, is it more active today than it ever was at any time before?

A. Yes, sir. As an example, I had occasion a few weeks ago to visit the plant of the Vitagraph Company, and was very much surprised to see that all the leading stars drove up to the plant in the morning each in his own automobile with a liveried chauffeur on the front seat.

Mr. GROSVENOR: Interesting, but hardly relevant, I think, so I object to it.

By Mr. CALDWELL:

Q. Are these licensed producers and importers in competition with the non-licensed producers and importers, commonly referred to as independents, but in point of fact, infringers? A. Yes, sir. The competition is very keen, not to say bitter.

Q. In what respect does that competition show itself particularly? A. You have reference now only to the producers?

Q. Yes. A. It shows itself in competition in the first place for stories that are to be made the basis of motion picture plays. Each producer, whether licensed or so-called independent, is trying to get the best plays he can to put out. The competition is very keen on the subject of actors, and if an actor has been popularized by one company so as to be a valuable acquisition, ridiculous offers are made to get him or her away. Competition has also manifested itself in advertising. Each producer is spending money to popularize his particular make of film. Then, all the producers send traveling men around to interest the exchanges in their films, and try to get the exchanges to buy more of their films. And the same thing is done as at the time of the Edison licenses, in trying to stir up interest on the part of theatres in certain makes of films. For instance, a producer might feel that his films are not represented as strongly as they should be in a certain territory, and he will send representatives around to interview all the theatres in that territory to try to get the

1 theatres to bring pressure to bear on the exchanges to buy that particular brand of films. Then, the competition, in another sense, is manifested by the fact that if some particular producer finds a very desirable place to operate in, where the conditions are good, generally all of his competitors flock out to the same place and establish themselves there—in other words, the competition is open and active, each producer trying to sell the maximum number of prints of the pictures he makes.

2 Q. Has there been any tendency in recent years for the non-licensed producers and importers to unite in turning out a program for the exhibiting theatres? A. Oh, yes, that is the only way the business can be handled, at least, under present conditions.

Q. How many groups of these unlicensed producers are there? A. There are two groups. One known as the Mutual, the other the Universal.

Q. Do you know what brands of pictures are turned out by the Mutual? Could you enumerate them from memory? A. I should rather not.

3 Q. I show you here, a copy of the Moving Picture World of November 1st, 1913, and ask you to refresh your memory by looking at that. A. The Mutual Company is allied with the producers of the following brands, namely, Apollo, Majestic, Tannhauser, American, Keystone, Reliance, Broncho, Domino, Kay-Bee, and Princess; and also handles a topical weekly called the Mutual Weekly.

Q. Many, if not all of the producers of the pictures, which you have just enumerated, were turning these pictures out two years ago, were they not? A. Yes, sir, as I recall it.

4 Q. And at the time the petition in this case was filed? A. Yes, sir.

Q. Now, will you enumerate what pictures are turned out by the Universal Company and its allied producers? A. The Universal group includes the following productions: Rex, Crystal, Eclair, Victor, Imp, Powers, 101-Bison, Nestor, Joker, Frontier, and a topical weekly called the Animated Weekly.

Q. What class of pictures are comprised in the Mutual Weekly and the Animated Weekly? A. Pictures of the same general type as the Pathe Weekly handled by the

General Film Company, or, in other words, a weekly or semi-weekly motion picture newspaper. It is a single reel of film composed of short scenes of topical interest, taken all over the world. 1

Q. Which of those weeklies was the first to make its appearance? A. The Pathe Weekly.

Q. Then, that set the standard, did it not, that was followed by the others? A. Yes, sir; the others copied it.

Q. These alliances which made up these two large groups of non-licensed producers, were a matter of growth, were they not? A. Yes, sir. Growth and development.

Q. Which commenced about the time of the organization of the Patents Company, that is to say, some of the companies producing those pictures sprang up very shortly after the Patents Company was organized? A. About that time, yes, sir. 2

Q. And they gradually formed themselves into these two large groups of competitors? A. That is correct.

Q. They are competing against each other and against the General Film Company and the licensed producers? A. Yes, sir, each group is trying to get as much business as it can, and minimize the business obtained by its competitors. 3

Q. About how many customers are now being served in the United States by the General Film Company? A. In the United States and Canada, about 7,100, as I recall. I think in the United States about 6,600.

Q. Do you know approximately how many theatres are being served by the exchanges handling the Mutual pictures and the Universal pictures? A. To the best of my knowledge, I believe that about the same number are handled by both of those concerns that are handled by our concern, although they claim that they are handling more. 4

Mr. GROSVENOR: I want to object to the latter part of that answer, as to what the others claim, as being improper.

Mr. CALDWELL: Before we get through this case, I think we will be able to show with reasonable certainty, how many customers are being served with the non-licensed pictures.

Mr. GROSVENOR: I have no doubt you can, but it

- 1 should be proved, of course, in the proper way, and
not by this witness stating what they claim.

By Mr. CALDWELL:

Q. Is the General Film Company in active competition with the exchanges handling the unlicensed pictures? A. Yes, sir. Most active competition.

- 2 Q. Can you state in what way such competition manifests itself? A. One peculiarly irritating way that competition manifests itself is that wherever we get a location for a branch exchange at a certain place, or a certain building, we find that our competitors try to get in the same location and, if possible, in the same building, and preferably on a lower floor, so as to intercept the customers. The competition between the exchanges manifests itself in the efforts on the part of each to get as much business as possible at the best possible price. Our competitors try to take our customers away from us by offering them better service or more reels, or a better price, and we do the same thing ourselves. All the exchanges are competing by means of traveling men who go around visiting various
3 theatres, and try to interest them in the respective programs of the exchanges that they represent. I think in that respect, the Mutual and Universal Companies are more active than we are. The competition is also manifested by the advertisements of the three concerns, each trying to convince the theatres that it handles the best films, and will give the most satisfactory service. The competition is manifested by the fact that both the Mutual and Universal Companies have for quite a considerable time, been taking a good many of our best men away from us by offering them better inducements as to salary. And in all
4 respects, I think the competition has been as keen and as active as could exist in any line of business. As a matter of fact, there has been no co-operation between the three divergent competitive interests, except possibly in one or two cases where unjust censorship laws have been agitated, where there has been co-operation to a certain extent, but there has not been the co-operation that I think exists and should exist between competitive units in other lines of business. In other words, it seems to me that in matters of common interest, competitors should unite, but that is

not the case with the three moving picture units referred to. 1

Q. Suppose the General Film Company undertook to increase the price of service to a given theatre, what would happen? A. Well, if it did that, as sometimes does happen, we find that a theatre is paying less than he ought to pay, paying less than the service is worth—if the theatre is convinced that the service is worth the additional price, he will pay it, the same as in any other line of business, but if the price is not satisfactory, the theatre will get service from one of our competitors. That is happening all the time. We are losing customers to them and they are losing customers to us. There is a constant shifting back and forth all the time. 2

Q. Would it be possible for the General Film Company to unduly raise the price of service to customers? A. No, sir, it would not. As I stated yesterday, the average profit of the General Film Company is only ten per cent.

Q. Can you state how many pictures are being released at the present time by the licensed producers and importers? A. In the regular service, about thirty-two single reels, and sixteen multiple reels, making a total of forty-eight, and twelve or thirteen reels in exclusive service, making a total of sixty or sixty-one per week. 3

Q. Can you state how many pictures are being released weekly by the Mutual group of producers and importers? A. About twenty-six. I think they are working to a production of twenty-eight per week, which would be the equivalent of four per day.

Q. Can you confine your answer to a statement of the actual conditions? A. About twenty-six to twenty-eight per week.

Mr. GROSVENOR: What does it show on that book that you are referring to as a memorandum? 4

The Witness: It shows that for the week of October 26th, there were twenty-six.

By Mr. CALDWELL:

Q. Does that include the special releases? A. Yes, sir, it includes their entire output.

- 1 Q. How many pictures are being released weekly by the Universal group of producers and importers? A. Twenty-eight, or four per day. That is the logical number of releases.

Mr. GROSVENOR: I object to this added answer about the logical number. It is not responsive to the question.

The Witness: By "logical number" I meant it provided a program of four reels per day with a daily change.

- 2 By Mr. CALDWELL:

Q. The figure that you gave of twenty-eight, represents the actual number of weekly releases, does it not? A. It does.

Mr. GROSVENOR: How did you make up the twenty-eight on this? Did you consider, wherever the title is named "In three parts" you considered it as three releases?

- 3 The Witness: Yes, sir; three reels.

By Mr. CALDWELL:

Q. That is customary in this business, is it not? A. Yes, sir.

Q. You counted your own releases the same way? A. In the same way.

- 4 Q. Do you know how the prices to the exhibitor, charged by the General Film Company, compare with the prices charged by the exchanges handling the output of those two groups, based upon the same run films? A. On an average, our prices are somewhat higher. The films are considered better and are worth more, but I know of isolated cases where the prices obtained by the other exchanges are higher, because they give exclusive territory in some cases. For instance, I know of a theatre in Atlanta that pays \$180 a week for Mutual service, because that theatre has quite an extensive territory in which the Mutual program is not shown. The price is based upon competitive conditions, and on an average we are able to get better prices than they are.

Q. Has the General Film Company a customer in the City of Atlanta from which it is receiving as high as \$180 a week? A. I don't recall any. 1

Mr. GROSVENOR: When you say you are able to get better prices, you mean you are able to get more from the exhibitor?

The Witness: They are willing to pay us more for our films than they are for their films.

Mr. GROSVENOR: That is because you have the larger theatres, isn't it? 2

Mr. CALDWELL: I object to the witness being cross examined at this particular time.

Mr. GROSVENOR: All right, I will withdraw the question. I mean, I won't insist on an answer. I asked you if I could ask a question.

Mr. CALDWELL: Any question that you want to ask for the purpose of explaining what the witness has said or to correct any misapprehension, is perfectly proper at the present time, but I do not think that you ought to enter into a cross examination of the witness until the direct examination has been concluded. 3

By Mr. CALDWELL:

Q. Have you seen many of the pictures released by the Mutual group and the Universal group?

Mr. GROSVENOR: Objected to as immaterial.

A. Why, yes, I run across these pictures every once in a while. I don't see all of them by any means. 4

Q. They turn out good, meritorious pictures, do they not?

A. Yes, sir, they are improving. They are making very great strides. The pictures are not as good, I don't think, as licensed pictures, but they are very much better than they once were.

Q. Can you state in what localities the General Film Company is maintaining branches today? A. Yes, sir.

1 Q. Will you state them? A. Bangor, Maine; Boston, Massachusetts; Buffalo, Albany and Syracuse, New York;—

Mr. GROSVENOR: That is already in evidence.

2 Mr. CALDWELL: You have a statement of the branches of the General Film Company which was prepared some time early in 1912, and which you introduced in evidence, which probably gave a correct list of the branch exchanges of the General Film Company as they existed at that time. This, however, has undergone considerable change since that time.

Mr. GROSVENOR: I would like to check that off with my list. Where is the Boston office?

The Witness: The two offices have been combined, and we had to move to another location because of the very harsh and oppressive fire laws.

3 Mr. GROSVENOR: Go ahead. I did not want to interrupt. I was just trying to get my own list accurate.

The Witness: Three offices in New York City. Rochester, and Syracuse.

Mr. GROSVENOR: Syracuse is a new one?

4 The Witness: Three offices in New York City, Philadelphia, Wilkesbarre and Pittsburgh, Pennsylvania—two offices in Pittsburgh; Baltimore, Maryland; Washington, D. C.; Wheeling, West Virginia.

Mr. GROSVENOR: Baltimore is a new office?

The Witness: Yes, sir.

Mr. GROSVENOR: Wheeling is a new one?

The Witness: Yes, sir. Atlanta, Georgia; Jacksonville, Florida.

Mr. GROSVENOR: Jacksonville is a new one?

1

The Witness: Yes, sir. Memphis, Tennessee; New Orleans; Houston—that is a new office; Dallas, Texas; Oklahoma City, St. Louis, Cincinnati, Columbus, Cleveland, Detroit, Indianapolis, Chicago, three offices instead of four. Milwaukee.

Mr. GROSVENOR: Milwaukee is a new office?

The Witness: Milwaukee is new. Minneapolis, Butte.

2

The Witness: Omaha, Kansas City, Salt Lake City, Denver, Phoenix. That is a new office.

Mr. GROSVENOR: Phoenix is new?

The Witness: Yes. Los Angeles, San Francisco, Portland, Oregon; Seattle, Spokane. St. Johns, New Brunswick, Montreal, Toronto, Winnipeg, Regina—that is a new office; Calgary, a new office, and Vancouver.

3

By Mr. CALDWELL:

Q. Were any of these new branch offices established, Mr. Dyer, as a result of the competition which you had with the Mutual and Universal exchanges? A. Yes, sir. Established to get into territory that they were working in, and we felt it important that we should get there ourselves.

Q. Which you were also serving, however, from some other branch? A. From a remote branch, yes, sir.

Q. Could you state offhand, some of those offices that were established for that purpose? A. Bangor, Maine; Syracuse, New York; Baltimore, Maryland; Wheeling, West-Virginia; Jacksonville, Florida; Milwaukee and Phoenix and Calgary. The office at Regina was established simply for the purpose of providing a place where films might be censored in the Province of Saskatchewan, in Canada. The Canadian provinces are very keen about their censorship. They look upon it apparently as a source of revenue.

4

1 Mr. GROSVENOR: I do not understand that last sentence. Look upon what?

The Witness: Upon the possibilities of censoring films.

By Mr. CALDWELL:

Q. What territory is being served by the Albany office of the General Film Company? A. The Albany office serves customers in the City of Albany and neighboring towns, works up in the northern part of New York State, sends
2 films over into Vermont, the western part of Massachusetts, and works down the Hudson River, about as far as Poughkeepsie.

Q. Now, what competition have you in that territory? A. Have you the list of competing exchanges?

Q. I think you have the list. A. (referring to list): The Universal Company maintains an exchange in Albany, which directly competes with us or directly competes with the Albany office; the Mutual Company maintains a branch in Springfield, Massachusetts, covering part of the Albany territory. Both Mutual and Universal companies main-
3 tain branches at Buffalo, which compete with the Albany territory, and both the Universal and Mutual companies maintain offices in New York City, which also compete with the Albany territory. A competing exchange, or rather, an exchange, can effectually serve customers within reasonable express distance.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M., at the same place.

NEW YORK CITY, November 12, 1913.

1

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., November 12, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. What territory is served by the Atlanta branch of the General Film Company? A. The Atlanta branch handles the territory in Georgia, and to a little extent it works down into Florida, also works over into Alabama, and handles some customers in Eastern Tennessee, and works up into South and North Carolina.

2

Q. Who are your competitors in that territory? A. The Mutual Company maintains an exchange on Walton Street, near our office, and the Universal Company maintains an exchange in the same building that we are in. In addition, the Mutual Company maintains an exchange in Charlotte, N. C., which competes with our Atlanta branch in North and South Carolina.

3

Q. Do you know the name of the Universal exchange that maintains the branch at Atlanta? A. Consolidated Film & Supply Company.

Q. Is that an exchange that is allied with the Universal Company? A. Yes, that handles the so-called Universal program in that territory.

Q. And limits itself to that program? A. Yes, sir.

Q. And does not handle any of the pictures produced by the Mutual group? A. No.

4

Q. What territory is served by the Baltimore branch of the General Film Company? A. Practically the City of Baltimore alone. There are some exhibitors in Baltimore served from Washington, and, I think, also some exhibitors in Baltimore who are served from Philadelphia.

Q. What competitors have you in Baltimore, or in the territory served from your Baltimore branch? A. The Mutual program is handled in Baltimore by the Continental Film Exchange, and the Universal is handled in

- 1 Baltimore by the Baltimore Film Exchange. Both of these exchanges directly compete with us in Baltimore. In addition, the Universal program is handled in Washington by the Washington Film Exchange, and the Mutual Company has a branch in Washington, which handles their program. The competition with us is direct.

- Q. The Continental Film Exchange is one of the several exchanges allied with the Mutual group, and the Baltimore Film Exchange is the name of another exchange allied with the Universal group, each devoting itself exclusively to the handling of films of their respective groups of producers, is that correct? A. Yes.

Q. What territory is served by the Bangor, Maine, branch of the General Film Company? A. That office serves customers in the central part of Maine, down as far south as Portland, but several customers in Portland are served from the Boston office.

- Q. And what competitors has the General Film Company in that territory? A. The Universal Company maintains, or rather the Universal program is handled in Boston by the New England Universal Film Exchange, and the Mutual Company maintains a branch in Boston. In addition, the New England Company maintains a branch at Waterville, Me., a short distance southwest of Bangor, and the Waterville office competes direct with our Bangor office. Before putting in the Bangor office, I might say that we debated whether to locate it at Waterville, or Bangor, but we thought that Bangor would be the better place. I do not recall whether the Mutual at that time was in Waterville or not. My impression is that they went to Waterville after we went to Bangor.

- Q. What territory is served from the Boston branch of the General Film Company? A. The Boston branch, owing to the proximity of the Charleston Navy Yards, serves quite a number of battleships, which is true of our two competitors. The territory served by the Boston office is Massachusetts, westerly until it overlaps the Albany territory, the southern part of Maine, New Hampshire, Rhode Island, and the eastern part of Connecticut, to where it overlaps the New York territory.

Q. What competition have you in that territory? A. We have a great deal of competition in that territory. The

Mutual Company maintains a branch at Boston, and the Universal films are handled by the New England Universal Film Exchange. In addition, the Universal maintains at Springfield, Mass., a branch of the Universal Film Exchange, of New York. The Mutual Company likewise maintains a branch in Springfield, Mass. 1

Q. What territory is served from the Buffalo branch of the General Film Company? A. The territory around Buffalo, as far east as Rochester, running south to Binghamton, the northern part of Pennsylvania, and the eastern part of Ohio, and Erie, Pa. 2

Q. What competition have you in that territory? A. The Mutual Company maintains a branch in Buffalo. In fact, as I recall, the Mutual Company has moved into quarters we formerly occupied before we moved out. 2

Mr. GROSVENOR: Please mark, Mr. Examiner, for identification, the memorandum which the witness is using.

Mr. CALDWELL: I will offer it in evidence.

Mr. GROSVENOR: I simply wanted it to help me in my cross examination, but if you are going to offer it in evidence, it need not be marked now. 3

The Witness: The Universal program is distributed in Buffalo from the Victor Film Service. These exchanges cover the same territory as our Buffalo office.

By Mr. CALDWELL:

Q. What territory is served by the Butte, Montana, branch of the General Film Company? A. Principally Montana, Eastern Idaho, and Northern Utah. The territory served by the Butte and Salt Lake City branches is more or less overlapping. 4

Q. What competition have you in that territory? A. The Mutual Company maintains an office in Butte, Montana, under the name of Pacific Mutual Film Corporation. It also maintains an office at Salt Lake City, both of which compete with our Butte office. The Universal program is distributed from the office in Butte of the William H. Swanson Film Company, and the same concern, under the same

- 1 name, operates an office in Salt Lake City. So that these two competitors are located at the same points that we are, and have the same competitive advantages.

Q. What territory is served by the branch of the General Film Company maintained at Calgary, in the Province of Alberta, Canada? A. The Calgary office serves the rapidly-developing Canadian territory located between Winnipeg and Vancouver, including the important cities of Calgary and Edmonton. That territory extends practically along the line of the Canadian Pacific Railroad.

- 2 Q. And what competition have you in that territory? A. I might say we opened the office at Calgary to take care of that territory because the jump between Winnipeg, or Vancouver, was too big to give effective service. We have competition from the Universal in Calgary, their exchange being called the Canadian Film Exchange; and they also maintain an office under the same name at Edmonton, Alberta. The Mutual Company maintains an office at Calgary, called the Mutual Film Corporation of Canada, and these offices compete directly with us and cover the same territory.

- 3 Q. You have stated that the General Film Company maintains three branch offices in the City of Chicago. What territory is served by these three branches? A. Principally the City of Chicago. These branches also serve customers in the southern part of Wisconsin, in the State of Illinois, and some customers in Iowa.

- Q. What competition do you meet with in that territory? A. The Universal program is handled in Chicago by the Anti-Trust Film Company, the Laemmle Film Service Company, and the Standard Film Exchange; and the Mutual Company maintains an office in Chicago under its own name, and its program is also handled by the H. & H. Film Service Company. The Mutual Company also maintains a branch at Des Moines, Iowa, which competes for the Iowa business of the General Film Company. Universal films are also distributed from Des Moines, Iowa, and from the Laemmle Film Service, which likewise competes for the Iowa business with the Chicago branches of the General Film Company.
- 4

Q. What territory is served from the Cleveland, Ohio, branch of the General Film Company? A. The territory in and around Cleveland, as far east as Erie, including customers at Toledo, and the northern part of Ohio, not served from Columbus.

Q. What competition have you in that territory? A. The Mutual Film Company maintains a branch at Cleveland, Ohio, and the Universal program is distributed by the Victor Film Service, of Cleveland, Ohio. The Mutual Company maintains an office at Columbus, Ohio, and the Universal films are distributed from Toledo, Ohio, by a concern called the Toledo Film Exchange Company, and both of these exchanges also compete with the Cleveland branch.

Q. What territory is served from the branch office of the General Film Company, maintained at Columbus, Ohio? A. Practically the City of Columbus, and the territory immediately surrounding it.

Q. What competition have you in that territory? A. The Mutual Company maintains a branch at Columbus, so as to directly compete with us, and also maintains branches at Cincinnati and Cleveland, which can also and do reach the Columbus territory. The Universal film is handled from Cleveland, Toledo, and Cincinnati, which points also include the Columbus territory.

Q. What exchanges handle Universal programs at Cincinnati, Cleveland, and Toledo? A. The Cincinnati Buckeye Film Exchange handles the Universal program at Cincinnati; the Victor Film Service handles the Universal program in Cleveland, and the Toledo Film Exchange Company handles the Universal program in Toledo.

Q. What territory is served from the branch of the General Film Company, maintained at Dallas, Texas? A. The Dallas branch until the formation of the branch at Houston, served the entire State of Texas, and also some towns in Arkansas, and Oklahoma, on the Texas border. Since the formation of the branch at Houston the territory of the Dallas branch is confined to towns in the neighborhood of Dallas, including Fort Worth, and territory south and north of Dallas.

Q. What competition have you in that territory? A. The Mutual Company maintains a branch in Dallas, a block away from our branch, and the Universal film is distributed in Dallas by the Consolidated Film Supply Co. Both the Universal and the Mutual companies maintain branches in Amarillo, Texas, which point I am not familiar with, but it is evidently a railroad center, and probably competes with the Dallas branch. The Mutual Company also maintains a

1 branch at Oklahoma City, which competes with the Dallas branch for business in the border cities between Oklahoma and Texas; and the Universal program is handled also from Oklahoma City, by the United Motion Picture Company, which likewise competes in that territory.

Q. What territory is served by the Denver, Colorado, branch of the General Film Company? A. The Denver, Colorado, branch serves customers in Colorado, some, I think, in eastern Utah, and as far north as Cheyenne, Wyoming. It overlaps the territory of the Omaha and Kansas City branches of the east.

2 Q. What competition have you in that territory? A. The Mutual Company maintains a branch in Denver, and the Universal films are distributed in Denver by the Wm. H. Swanson Film Company. The Universal Film Company also maintains a branch for the Universal Film & Supply Company at Wichita, Kansas, which covers part of the territory supplied by the Denver office. Both the Universal and Mutual companies maintain branches in El Paso, Texas, which would compete with part of the territory supplied from Denver.

3 Q. Do you happen to know whether the Wm. H. Swanson Film Company, which maintains a branch at Denver, Colorado, is conducted by the same William H. Swanson who appeared here as a witness on behalf of the petitioner? A. I don't know whether Mr. Swanson conducts this exchange or not; I don't know the relations between these exchanges and the Universal Company, except that they handle the Universal program on some basis that prevents conflicts. Whether they are owned at all by that company, or operated under some agreement with it, I am not able to state. The same William H. Swanson whom you refer to is the same man who started these exchanges. I know him very well. I have met him. Well, I know him very well.

4 Q. What territory is served from the Detroit, Michigan, branch of the General Film Company? A. The territory of Michigan, Grand Rapids, down into Ohio, including some customers, I think, in Toledo.

Q. What competition have you in that territory? A. Very active competition. The Mutual Company maintains a branch in Detroit, and the Universal program is distributed by the Detroit Universal Film Company, in

Detroit. The Universal Company also maintains a branch at Grand Rapids, and, as I have stated, a branch, or rather its film is distributed from Toledo, by the Toledo Film Company. The Mutual Company also maintains a branch at Grand Rapids, so that in this particular territory each of our competitors has two branches to our one. 1

Q. What territory is served from the branch of the General Film Company maintained at Houston, Texas?

A. The Houston branch serves territory on the M. K. & T. Railroad, as far north as Waco, also Galveston, and towns on the Southern Pacific Railroad to the Louisiana line on the northeast, including Beaumont, and El Paso. 2

Q. What competition have you in that territory? A. The Houston branch of the General Film Company, I might state, was started by the receiver, and not by the company. The Mutual Company maintains a branch at El Paso, Texas. It also maintains a branch at New Orleans, La., and at Amarillo, Texas. I don't know where Amarillo is, so that I am not able to state of my own knowledge what the territory is that it serves. The Universal Company also maintains an office at Amarillo, which apparently is a good distributing point; and there are two offices in El Paso handling the Universal program, namely, the Consolidated Film Supply Co., and the William H. Swanson Film Company. The Universal Company also maintains an office, or its films are distributed from New Orleans, by the Consolidated Film Supply Company. Neither of our competitors appears to have an office at the present time in the City of Houston. 3

Q. But the territory which is served from your Houston branch is served by your competitors? A. Oh, yes; they have customers there, and it was only recently that we opened it, or the receiver opened up the Houston office. 4

Q. What territory is served from the Indianapolis branch of the General Film Company? A. The State of Indiana, northern Kentucky, western Ohio, and eastern Illinois.

Q. What competition have you in that territory? A. The Mutual Company maintains offices in Cincinnati, Columbus, Evansville, and the Chicago offices would also cover the upper part of Indiana, on the Pennsylvania and Lake Shore Roads. The Universal program is distributed from Indianapolis by the Central Film Service Com-

1 pany. They also have distributing offices for their films in Chicago and Louisville, to cover the Indiana territory.

Q. What territory is served from the Jacksonville, Florida, branch of the General Film Company? A. The Jacksonville branch is a new office that has been started, covering the State of Florida, including the towns around Tampa, on the western coast, and the numerous Winter resorts on the eastern coast. It was started because much of the business in Florida is circuited, that is to say, films started out on a circuit to several theatres before coming back to the branch, and when the business was handled from Atlanta it was very difficult to get these films back, and they were kept out anywhere from four to six weeks after they were due to be returned. The Jacksonville office was started to facilitate this business. Some of the important exhibitors of Jacksonville are served from Atlanta.

Q. What competition have you in that territory? A. The Atlanta office of the Mutual Film Corporation competes in Florida, and the Mutual Film Corporation also maintains a branch at Tampa, which covers the Florida territory very well. The Universal program is also handled from Atlanta, and there is a branch or a distributing exchange for their films at Tampa, so that both of our competitors are directly in this territory, although neither has a branch at Jacksonville. The situation in Florida is very similar to the situation in Maine, the same territory being covered, although the exchanges are not located in exactly the same cities.

Q. What territory is served from the Kansas City, Missouri, branch of the General Film Company? A. The territory around Kansas City, up towards Omaha, where it conflicts with the Omaha territory, into Eastern Kansas, the western part of the State of Missouri, and south-westerly into the territory covered by the Oklahoma branch.

Q. And what competition have you in that territory? A. The Mutual Film Company maintains a branch at Kansas City, and the Universal films are handled by the Universal Film Company, of Kansas City. The Mutual Company also maintains branches in Omaha, St. Louis, and Oklahoma City, competing with our Kansas City branch. The Universal program is also handled from Wichita, St.

Louis, and Omaha, so as to also compete directly with the Kansas City branch, and covers the same territory as that branch. 1

Q. What territory is served from the Los Angeles, California, branch of the General Film Company? A. The southern part of California, up towards the territory covered by the San Francisco office, westwardly into Arizona, towards the territory covered by the Phoenix office, and as far south as San Diego.

Q. And what competition have you in that territory? A. The Mutual Company maintains a branch at Los Angeles, called the Pacific Mutual Film Corporation, which competes directly with our Los Angeles branch; it also maintains an office in San Francisco, which works down into the territory covered by the Los Angeles branch. The Universal program is distributed from Los Angeles by the California Film Exchange, which competes directly with our Los Angeles branch, and from San Francisco by the California Film Company, which works into the territory covered by the Los Angeles branch. The California Film Exchange also handles the Universal program at Phoenix, which works westwardly through the territory covered by the Los Angeles branch. 2 3

Q. What territory is served from the branch of the General Film Company maintained at Memphis, Tennessee?

A. The western part of Tennessee, including Nashville, up into Kentucky, where it begins to overlap the territory of the Cincinnati office, Western Arkansas, and the northern part of Louisiana, down into Shreveport. It also covers some of the business in Northern Mississippi, and Northern Alabama.

Q. What competition have you in that territory? A. The Mutual Company maintains a branch in Memphis, so as to directly compete with us, and the Universal film is handled by the Consolidated Film Supply Company, of Memphis, so as to directly compete with us. The Universal program is also handled by the Standard Film Exchange, of Louisville, so as to cover the northern part of the territory covered by the Memphis office of the General Film Company, and the Evansville office of the Mutual Company would work down into the northern territory covered by the Memphis office of the General Film Company. Both of the distributing offices of the Mutual and Universal programs in New Orleans, 4

1 working north, would also cover the territory handled by the Memphis branch.

Q. What territory is served from the branch of the General Film Company maintained at Milwaukee, Wisconsin?

A. Principally the City of Milwaukee, and northern Wisconsin, extending as far west as the territory included in the Indianapolis office, and keeping north of the territory covered by the three Chicago offices.

2 Q. What competition have you in that territory? A. The Mutual program in Milwaukee is distributed by the Western Film Exchange, and the Universal program is distributed into this territory from its Chicago offices. The Milwaukee office of the General Film Company is quite close to the Chicago office, and while not considered strictly necessary, it was desirable to cover customers in the northern part of Wisconsin. The same territory would be covered by the Universal program by their Chicago offices, working northwardly, and their Minneapolis office working east.

3 Q. What territory is served from the Minneapolis, Minnesota, branch of the General Film Company? A. The State of Minnesota, the eastern part of the Dakotas, and the northern part of Iowa, and some customers in the eastern part of Wisconsin.

4 Q. What competition have you in that territory? A. The Mutual Company maintains a branch at Minneapolis, and the Universal program is distributed from Minneapolis by the Laemmle Film Service. In addition, the Universal program is distributed from Des Moines, so as to cover the State of Ohio, which we have to cover from Minneapolis and Chicago, and the Mutual Company maintains a branch at Des Moines which serves the same function for their program. In other words, both the Mutual and Universal companies cover the State of Iowa more effectively than we do.

Q. What territory is served from the Montreal, Canada, branch of the General Film Company? A. The Province of Ontario, including Ottawa, and working down the St. Lawrence River to include Quebec, but not including New Brunswick or Nova Scotia.

Q. What competition have you in that territory? A. The Mutual Company maintains a branch in Montreal, the Mutual Film Corporation of Canada, and the Universal program is distributed by the Canadian Film Exchange from Montreal.

These offices cover the same territory as our branch. The territory covered by the Montreal office practically extends parallel to the St. Lawrence River and south of the St. Lawrence. 1

Q. What territory is served from the New Orleans, Louisiana, branch of the General Film Company? A. The territory of Louisiana, working northwardly into Shreveport, running west into Oklahoma, and with the approval of the receiver in Texas, including some cities in the northeastern part of Texas. This office also serves Mobile and other towns in Alabama and Mississippi. Perhaps I should explain that the territories covered by these branches in almost every case follow the lines of the railroads and rivers; lines of travel. 2

Q. What competition have you in the Louisiana territory or in the territory served from the New Orleans branch? A. The Mutual Company maintains an office in New Orleans, so as to directly compete with us, and the Universal program is distributed by the Consolidated Film & Supply Company at New Orleans, which also competes directly with us. The Dallas and Oklahoma City offices of our competitors cover a portion of the territory also of the New Orleans branch. This territory, for the most part, contains very small theatres, although there are some large theatres in New Orleans. 3

Q. I think you have testified that the General Film Company maintains at the present time three branches in the City of New York, is that correct? A. Yes, sir.

Q. At one time you had five branches in the City of New York? A. Yes, sir.

Q. What became of the branches of the General Film Company at one time maintained in New York City that are not now maintained? A. Early in the present year, we consolidated four of these branches, and located them in two new offices, one office at the corner of 23rd Street and Sixth Avenue, and the other office at the corner of Fourth Avenue and 34th Street, so that we are at the present time maintaining these two large exchanges, and also the Peoples Exchange or Peoples Branch, on 42nd Street. 4

Q. Why did you consolidate those branches?

Mr. GROSVENOR: Objected to as immaterial.

The Witness: Well, that was done before I became Pres-

- 1 ident of the General Film Company, and I do not recall exactly why it was.

By Mr. CALDWELL:

Q. Were the questions of economy, greater efficiency in distribution and convenience, factors?

Mr. GROSVENOR: I object to that on the ground that the witness has stated he does not know, and the question is leading.

- 2 A. I think the principal reason was that the quarters where these former branches were located were cramped and small, and dangerous in case of fire. Of course, the consolidation of the branches would result in economy of the service.

Q. Without impairing the efficiency of the service to the exhibitor? A. Why, it actually would improve the efficiency of the service.

- 3 Q. Will you state what territory is served from the three branches of the General Film Company maintained in the City of New York? A. Greater New York, Long Island, Westerly, Connecticut, including Bridgeport and Waterbury, up the Hudson River as far as Poughkeepsie; Newark, New Jersey, and the northern towns in New Jersey.

Q. Including Jersey City and Hoboken? A. Yes, sir.

Q. What competition are you met with in that territory? A. The main office of the Mutual Company in New York City is located in the same building that our 23rd Street branch is located in, although below us.

- 4 Q. That is 71 West 23rd Street? A. Yes, sir. They also maintain a branch at 145 West 45th Street. The Universal program is handled by two branches of the Universal Film Exchange on East 14th Street, and 1600 Broadway. These branches compete directly with us in this territory. The Universal program is also distributed by the Royal Film Exchange of Newark, so that there is a better distribution of the Universal program in this respect. The Springfield branch of the Mutual Company and of the Universal Company also compete in the territory in Connecticut, which we cover from New York.

Q. What territory is served from the Oklahoma City,

Oklahoma, branch of the General Film Company? A. That is a small branch, covering the territory of Oklahoma, which is at present going through a period of hard times through over-development. It includes also some towns in the northern part of Texas, and some customers, as I recall, in Arkansas and Indian Territory.

Q. And what competition have you in that territory?

A. The Universal program is distributed by the United Motion Picture Company of Oklahoma City, which competes directly with us in that territory, and the Mutual Company maintains a branch at Oklahoma City. The two competitors in respect to this office, have an advantage over us because our Oklahoma office is not allowed to work down into Texas, and our Dallas office does not work up to Oklahoma City, but they have no restrictions of their field of operation.

Q. What territory is served from the Omaha, Nebraska, branch of the General Film Company? A. The State of Nebraska, running westwardly to the territory covered by the Denver office, and customers in Iowa up to the territory covered by the Minneapolis office and working downwards. Also customers to the south where the territory of the Kansas City office is encountered.

Q. And what competition have you in the territory served from the Omaha branch? A. The Mutual Company maintains a branch at Omaha, and the Universal program is handled by the Laemmle Film Service of Omaha. These two concerns, as I have before stated, maintain offices in Iowa, or have exchanges for the distribution of their programs in Iowa, and therefore cover the Iowa territory direct, whereas we have to cover it from the Omaha office.

Q. What territory is served from the Phoenix, Arizona, branch of the General Film Company? A. That is a very small, unimportant office, and I do not know very much about it, except that it covers a limited territory in Arizona, principally on the railroad lines from El Paso to Los Angeles.

Q. And what competition have you in that territory? A. The Universal program is handled by the California Film Exchange, which is located directly in Phoenix, and also from Los Angeles and El Paso, as I have before explained. The Mutual Company maintains a branch in El Paso, Texas, and also a branch in Los Angeles, so that these two offices between them cover the same territory.

1 Q. What territory is served from the Philadelphia branch of the General Film Company? A. The Philadelphia branch is a large and active branch, serving customers in Philadelphia, in southern New Jersey, including Trenton and Atlantic City and the summer resorts on the Jersey coast. It also serves customers in Delaware, down the eastern shore of Maryland. It works westerly towards Harrisburg, and northerly towards the Wilkesbarre office. The Philadelphia office also has some customers that are served by it as far south as Richmond, Virginia.

2 Q. What competition have you in the territory served from the Philadelphia branch? A. The Mutual maintains a branch in Philadelphia, and the program is also handled by the Continental Film Exchange of Philadelphia, and it also maintains a branch at Harrisburg, Pennsylvania.

3 Q. Doesn't the Mutual maintain two branches in Philadelphia? A. I said that. One is the Mutual Film Company and the other is the Continental Film Exchange. The Mutual program is also distributed from Wilkesbarre, Pennsylvania, and the Western Film Exchange. Also, in Baltimore, Maryland, as I have before stated. The Universal maintains three offices, or rather its films are distributed from three offices in Pennsylvania, the Eagle Projection Company, Interstate Film Company, and the Philadelphia Film Exchange. The Universal program is also distributed from Harrisburg, from Wilkesbarre, and from Baltimore, so that our competitors are directly in the same territory as ourselves.

Q. You have stated that the General Film Company maintains two branches in the City of Pittsburg, Pennsylvania, have you not? A. Yes, sir.

4 Q. What territory is served from those two branches? A. The western part of Pennsylvania up into New York State to the territory covered by the Buffalo office, westerly into Ohio, including Youngstown. And down in West Virginia. I think the Pittsburg offices also serve some customers in western Maryland.

Q. And what competition have you in the territory served from your two Pittsburg branches? A. The Universal program is distributed in Pittsburg by the Pittsburg Photoplay Company, and the Universal program is distributed in Pittsburg by the Independent Film Exchange, both of which concerns compete directly with our Pittsburg branches. In

addition, the Harrisburg, Buffalo, Cleveland, Columbus and Cincinnati offices of our competitors would work into the territory covered by the Pittsburg offices of the General Film Company. 1

Q. What territory is served by the Portland, Oregon, branch of the General Film Company? A. Principally the State of Oregon, the northern part of California out of the reach of the San Francisco office, the southern part of the State of Washington below the Seattle office.

Q. What competition has the General Film Company in that territory? A. The Mutual Company maintains a branch at Portland, Oregon, and the Universal program is distributed by the Film Supply Company, also located at Portland, Oregon, so that these offices compete directly with us. Our competitors also maintain branches, as we do, in Seattle, Spokane, and San Francisco, so as to cover this territory in addition to the Portland offices. 2

Q. What territory is served from the Regina branch of the General Film Company? That is in the Province of Saskatchewan. A. The Regina office was largely formed for the purpose of providing for the censorship of films in that province. That is a very recent office, so that I am not able to state of my own knowledge, the territory which it covers, except that, as we all know, it is located between Winnipeg and Calgary and covers this intermediate territory. Most of the information I have been giving regarding our offices is based on my own personal observations, or from the direct reports to me from the managers. 3

Q. Do you know what competition you have in the territory in which Regina is located? A. The Canadian Film Exchange handles the Universal program in Regina, and it also maintains branches in Saskatoon and Calgary, so as to cover this western Canadian territory—and the Mutual Company maintains a branch in Regina and also one in Calgary, to cover the same territory. This territory, as I said, is practically limited to the great trans-continental railroads running across Canada, and does not extend north and south, but almost always east and west. 4

Q. What territory is served from the Rochester, New York, branch of the General Film Company? A. Almost exclusively the territory of Rochester. This is a small branch. The territory could almost as well be handled from Buffalo.

1 Q. What competition do you find there? A. Neither of our competitors is located at Rochester, but the Mutual Company maintains a branch in Buffalo, and the Universal program is distributed by the Victor Film Service of Buffalo. The Universal office at Albany also occupies a competitive relation to our Rochester office. This is not an important point, and it is not unlikely that the office will be closed.

2 Q. What territory is served from the St. Louis, Missouri, branch of the General Film Company? A. The St. Louis branch is an important, large branch, serving the territory around St. Louis, Eastern Missouri, into the territory covered by Kansas City, southerly into Arkansas, including also, Kentucky, and southwesterly Illinois, and a part of Iowa.

3 Q. And what competition have you in that territory? A. The Mutual Company maintains a branch in St. Louis, and the Universal Company also maintains a branch in St. Louis, so that these concerns compete directly with us. Both of our competitors also maintain branches in Kansas City, Des Moines, and other places that compete into the territory covered by our St. Louis office.

3 Q. What territory is served from the Salt Lake City, Utah, branch of the General Film Company? A. This is not a very important branch, because the territory in Utah is very sparsely settled, and the principal business is at Salt Lake City. The branch, however, serves customers as far north as Montana and co-operates to a certain extent with the Butte office, which serves customers also westerly towards Portland, and southeasterly towards Denver. The Salt Lake City office is not very important, and the territory is not particularly good.

4 Q. What competition have you in that territory? A. The Mutual Company maintains a branch at Salt Lake City, and the Universal program is distributed by the William H. Swanson Film Company of Salt Lake City, so that our two competitors are competing directly with us in that territory.

Q. What territory is served from the San Francisco, California, branch of the General Film Company? A. This is also a very important branch. It includes the city and adjacent country around San Francisco, working west in the State to Stockton, and working southerly towards the

Los Angeles territory, and northerly towards the territory covered by the Portland, Oregon, office. 1

Q. And what competition have you in that territory?

A. The Mutual Company maintains a branch in San Francisco.

Q. Under what name? A. Under the name of the Pacific Mutual Film Corporation. And the Universal program is distributed in San Francisco by the California Film Exchange. Here, again, our competitors surround us, on the north by offices in Portland, and on the south by offices in Los Angeles, on the east, by offices in Salt Lake City, so as to cover the territory of the San Francisco office. 2

Q. What territory is served from the Seattle, Washington, branch of the General Film Company? A. Practically the State of Washington, as far north as the Canadian border, working westerly towards the territory covered by the Spokane office, and down into Wisconsin into the territory covered by the Portland, Oregon, office. Seattle also serves customers in Alaska.

Q. And what competition have you in the territory served from your Seattle office? A. The Mutual Company maintains a branch at Seattle, and the Universal program is distributed by the Film Supply Company of Seattle. Both of our competitors are, therefore, located in the same central city that we are, in this territory, and in addition, have branches or distributing points in Spokane and Portland. I notice that the Mutual maintains a branch at Sioux Falls, South Dakota, which gives them better distribution in the territory between our Butte and Minneapolis offices. We have no office at that point. 3

Q. What territory is served from the Spokane, Washington, branch of the General Film Company? A. The Spokane, Washington, branch serves the territory in the westerly part of Washington, not covered by Seattle, into Idaho, and the westerly part of Montana, also down into northwesterly Wyoming, and northern Utah. This is a territory of a few scattered towns and not very large theatres. 4

Q. Did you mention both the Mutual and the Universal companies in connection with your Spokane branch? A. The Mutual Company maintains a branch in Spokane, and the Universal program is distributed by the Film Supply

1 Company of Spokane, so that they are located in the same city that we are.

Q. What territory is served from the St. Johns, New Brunswick, branch of the General Film Company? A. This branch serves the territory of New Brunswick and Nova Scotia, including the important towns of Halifax and Prince Edward Island.

2 Q. And what competition have you in that territory? A. The Mutual Company maintains a branch at St. Johns, the Mutual Film Corporation of Canada; and the Universal Company appears to have no distributing office at St. Johns, its nearest distributing point being at Montreal. This territory is not very important, except for the two cities of St. Johns and Halifax.

3 Q. What territory is served from the Syracuse, New York, branch of the General Film Company? A. The Syracuse branch is very similar to the Rochester branch, and is quite unimportant. It serves principally the City of Syracuse, and its immediate neighborhood, including, I think, Utica. But its territory could be handled about as effectively from Buffalo and Albany, and it is not improbable that this office may also be closed.

Q. What competition have you in the territory served from the Syracuse office? A. Principally from the Buffalo and Albany offices of our competitors.

4 Q. What territory is served from the Toronto, Canada, branch of the General Film Company? A. That branch serves the territory principally of the City of Toronto, which is a very large, flourishing place, also in Ontario, easterly towards Montreal and Ottawa, and westerly towards Winnipeg on the line of the Canadian Pacific and Grand Trunk Railroads. It serves the towns also on the Canadian shores of the Great Lakes.

Q. And with what competition are you met in that territory? A. The Mutual Company maintains a branch in Toronto, so as to compete directly with us, and the Universal program is distributed by the Canadian Film Exchange, which is also located in Toronto. Both the Mutual and Universal programs are distributed also from Winnipeg, so as to work easterly towards the territory covered by the Toronto branch.

Q. What territory is served from the Washington, Dis-

trict of Columbia, branch of the General Film Company? A. Principally Washington, D. C., and including also customers in Baltimore, the westerly shore of Maryland, up into Maryland towards the Pennsylvania line, westerly towards Hagerstown, so as to meet the territory of the Pittsburg offices, and southerly into Virginia and North Carolina. The Washington office also serves some customers, I think, in West Virginia towns. I recall Grafton, particularly, Grafton, West Virginia. 1

Q. And with what competition are you met in the territory served from your Washington branch? A. The Mutual Company maintains a branch in Washington, and the Universal program is distributed in Washington by the Washington Film Exchange, so that our competitors are located directly at the same center of distribution as ourselves. In addition, the Mutual Film Corporation maintains a branch at Charlotte, North Carolina, so as to cover the territory midway between the Washington and Atlanta branch of the General Film Company, and the Universal program is also distributed in Charlotte by the Interstate Films Company, so as to cover this intermediate territory. 2

Q. What territory is served by the Wheeling, West Virginia, branch of the General Film Company? A. A very limited territory, including the immediate neighborhood of Wheeling, some towns in the eastern part of Ohio, like Bellaire and Martin's Ferry, and some of the mining towns in northwestern West Virginia. 3

Q. And what competition do you have in that territory? A. The Mutual Company maintains a branch in Wheeling, so as to compete directly with us, and the Universal Company also maintains a branch in Wheeling, so as to likewise compete directly with us in that rather limited territory.

Q. What territory is served from the Wilkesbarre, Pennsylvania, branch of the General Film Company? A. This branch serves the territory principally in the immediate neighborhood of Wilkesbarre, including Scranton, works down towards the Philadelphia offices, and westwardly into western New Jersey. It also serves some customers in southern New York, such as Binghamton, and therefore approaches the territory of the Buffalo and Rochester offices. It works westerly on the northern part of Pennsylvania towards the Pittsburg territory. 4

1 Q. What competition do you find in the territory served from your Wilkesbarre branch? A. There is a Mutual exchange in Wilkesbarre called the Western Film Exchange, which appears to be located a few doors away from our branch, and the Universal films are distributed in Wilkesbarre by the Exhibitors' Film Exchange, which is located in the same building as the Mutual Exchange, so that these two exchanges therefore compete directly with our Wilkesbarre branch.

2 Q. What territory is served from the Winnipeg, Canada, branch of the General Film Company? A. The important territory around Winnipeg running westerly towards Calgary and Regina and easterly on the railroads towards Toronto, a territory that is very large in area, but not very thickly populated. Also, some of the growing cities on the northern shore of Lake Superior.

3 Q. And what competition are you met with in that territory? A. The Mutual Company maintains a branch at Winnipeg, the Mutual Film Corporation of Canada; and the Universal program, as is the case with all Canadian branches, is distributed in Canada by the Canadian Film Exchange, whose branch is located in Winnipeg, so that these two exchanges therefore compete directly with us on questions of service.

Q. What territory is served by the branch of the General Film Company maintained in Vancouver, Canada? A. The territory in and around Vancouver, working westerly towards Calgary and Edmonton. I am not sure, but I think that part of the Alaska business is also handled from Vancouver.

4 Q. And what competition do you find in that territory? I don't mean Alaska, the last territory referred to, but the territory served from that branch. A. The Mutual Company maintains a branch at Vancouver, and the Universal films are distributed by the branch of the Canadian Film Exchange at Vancouver. I might say that the Canadian Film Exchange in Canada maintain offices at Edmonton and Saskatoon, where the General Film Company is not located.

Q. Is there a point anywhere in the United States and Canada where you are not met with competition by one or both of these exchanges, or exchanges allied with one or the other, or both of these two groups of producers? A. No, there is not. As a matter of fact, with the exception

of Bangor, Jacksonville, Rochester and Syracuse, every point where we have a distributing office, also contains an office of one or the other or both of our competitors, and generally both of our competitors, and these few exceptions are territories that are just as effectively or almost as effectively covered by our competitors from adjoining towns. On the other hand, our competitors are located at a good many points where we have no branches, and where it is not always easy to meet competitive conditions of service. For instance, their offices in Charlotte, North Carolina, are important distributing points where we are not located. Their offices in Tampa, Florida, are important points, although, for all practical purposes, we try to cover this territory from Jacksonville. Their offices in El Paso are very important distributing points which we could not reach from Houston probably inside of forty-eight hours, and they have a very important advantage at this point. The office of the Mutual at Sioux Falls is also an important distributing point, which directly reaches territory that we cannot effectively cover from Butte, Salt Lake, Omaha or Minneapolis, and the offices of our competitors at Springfield, Massachusetts, are important distributing points in very thickly populated sections of the country. The towns, such as Springfield, Holyoke, Worcester, Greenfield and Hartford being within very close striking distance.

Mr. GROSVENOR: Well, you furnish theatres in all the towns you have named, don't you, with films?

The Witness: We furnish the theatres in those towns, but I am trying to point out that by reason of the larger number of offices that they have, our competitors can furnish them more easily than we can. The offices of the Mutual in Evansville, Indiana, and of the Universal in Louisville, Kentucky, also cover territory that we cannot reach so effectively from our Memphis, Cincinnati and Indianapolis branches. On the whole, I should say that, so far as competitive conditions are concerned, the Universal and Mutual are more advantageously placed to give service quickly than we are, and that the absence on our part of enough distributing offices is something of a handicap.

1 By Mr. CALDWELL:

Q. And how do you find this competition, Mr. Dyer—is it active, keen, vigorous, and hostile? A. Yes, sir; it is very active and very keen, and more or less bitter. The business is a new business, and I might say that it has not become thoroughly civilized. There is not the feeling of courtesy and good will that ought to exist between competitors. The feeling seems to be, on the part of exchange managers, one of personal hostility towards anyone who is connected with a competing exchange. The effort in each case is to try to get all the business that can be gotten. Our competitors make frantic efforts to take our customers away from us by offering them more reels, or reels of newer age, or better service, or special features, or free posters, or agree to pay express charges both ways, or they make a better price, in order to get the business, and, of course, we try to do the same thing ourselves. It is exactly the same as any other business where competition enters. The factors are fighting for all they can get, and they are fighting for the best prices that they can get, and in a good many sections of the country, I know of my own personal knowledge, that our competitors are making more active efforts than we are, to get our customers away from us, than we are from them. For instance, I know that in the Boston office, the Mutual Company is now traveling six men, who are going through New England for the purpose of trying to alienate and get customers away from the General Film Company. These are competitive methods. These are the methods that are adopted in any business, particularly in the business that is developing, and a business that is in its infancy, where conditions of stability have not probably as yet been reached.

4 Q. Are the Universal and Mutual Company continually getting customers away from the General Film Company? A. Oh, yes. That is a fact, that customers are going back and forth from one concern to the other constantly and repeatedly.

Q. And you are constantly getting their customers? A. We are getting their customers, and they are getting ours. Of course, we have some customers who have been with us a long time, and who seem to be entirely satisfied with our films and our program, and their patrons prefer our

films and have taken an interest in the popular actors that we put out, and they have stayed with us, but a large number of theatres are shifting around all the time. They will first try the General Film program, and then they will get sick of that, and then they will try the Mutual program, and get tired of that, and then try the Universal program and give that up, and then come around to the General Film program again, and it will be one round from one exchange to the other, constantly changing from week to week.

1

Q. So that there are three distinct programs that are being supplied to the motion picture theatres throughout the United States and Canada, is that correct? A. Three distinct regular programs.

2

Q. One program supplied by the so-called licensed producers and importers, licensed by the Motion Picture Patents Company, the defendants in this case? A. Yes.

Q. A program supplied by the Universal Company, which is comprised of ten or more well known makes of films—and a third program supplied by the Mutual, which is still a third group of producers? A. I don't know what the relationship is between the producers of these programs and the distributors, but it is a fact that there are three competing programs being distributed at the present time in active competition in the United States. First, the General Film program; second, the Mutual program; and third, the Universal program. And it is the effort of these three competing companies to get as many theatres as they can to use their particular programs, and to pay the highest price for those programs that they can get.

3

Q. And the Universal exchanges will not supply to their customers, pictures that are handled by the Mutual exchanges, and vice versa, is that correct? A. That is correct. They confine themselves to their own pictures, their own brands, making a complete program in every case, so that their customers can get the particular variety of service that they contract for.

4

Q. And that is a trade custom or necessity in the business that has developed?

MR. GROSVENOR: I object to that as not clear.

- 1 A. It undoubtedly is the result of evolution, and that evolution is the growth toward greater and greater complexity, from the very simple fundamental germ of a single reel that the theatre did not select, but took merely as a matter of novelty, and the moving picture business apparently developed from that germ until, at the present time, instead of giving one reel to a theatre, we are able to give them three or four reels every day, and change as often as they want to, from once to seven times a week. I might say that the thing is getting so absurd in the way of this constant shifting of program, that we actually
- 2 have cases where a theatre changes a program twice in one day.

Mr. CALDWELL: As a matter of convenience, I offer in evidence a list of the branches maintained by the General Film Company at the present time.

Mr. GROSVENOR: Will this be identified by the witness?

By Mr. CALDWELL:

- 3 Q. Will you identify it? Is that a correct statement of the branches of the General Film Company maintained today? A. I am certain it is correct as far as the cities are concerned, but I don't remember the street address of all of our branches.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 108," and is as follows:

Defendants' Exhibit No. 108.

4

November 10th, 1913.

GENERAL FILM COMPANY BRANCHES.

Albany, N. Y., 737 Broadway.
Atlanta, Ga., Rhodes Bldg. Annex.
Baltimore, Md., 329 W. Pratt St.
Bangor, Me., 123 Franklin St.
Boston, Mass., 218 Commercial St.
Buffalo, N. Y., 122 Pearl St.

Butte, Montana, 50 E. Broadway.	1
Calgary, Alberta, Canada, 85 McDougall Blk.	
Chicago, Ill. (Wabash), 17-19 S. Wabash Ave.	
Chicago, Ill. (City Hall), 139 N. Clark St.	
Chicago, Ill. (American), 429 S. Wabash Ave.	
Cincinnati, Ohio, S. E. Cor. 7th & Walnut Sts.	
Cleveland, Ohio., 1022 Superior Ave., N. E.	
Columbus, Ohio, 26 W. Naghten St.	
Dallas, Texas, 1917 Main St.	
Denver, Colo., 1448 Champa St.	
Detroit, Mich., 71 Griswold St.	
Houston, Texas, 807 Franklin St.	2
Indianapolis, Ind., 24 W. Washington St.	
Jacksonville, Fla., 355 St. James Bldg.	
Kansas City, Mo., 921 Walnut St.	
Los Angeles, Cal., 727 S. Main St.	
Memphis, Tenn., Lotus Bldg.	
Milwaukee, Wis., 220 W. Water St.	
Minneapolis, Minn., 909 Hennepin Ave.	
Montreal, Canada., 243 Bleury St.	
New Orleans, La., 840 Union St.	
New York City (4th Ave.), 440 Fourth Ave.	3
New York City (23rd St.), 71 West 23rd St.	
New York City (Peoples), 260 West 42nd St.	
Oklahoma City, Okla., 211 West Second St.	
Omaha, Neb., 208 S. 13th St.	
Phoenix, Ariz., 446 W. Washington St.	
Philadelphia, Pa., 1308 Vine St.	
Pittsburgh, Pa. (Calcium), 119 Fourth Ave.	
Pittsburgh, Pa. (Columbia), 436 Fourth Ave.	
Portland, Ore., 68 Broadway.	
Regina, Sask., McIvor Bk. Rose & S. Railway Sts.	
Rochester, N. Y., 501 Central Bldg., 158 E. Main St.	4
St. Louis, Mo., 604 Chestnut St.	
Salt Lake City, Utah, 260 Floral Ave.	
San Francisco, Cal., 138 Eddy St.	
Seattle, Wash., 819 Third Ave.	
Spokane, Wash., 120 Wall St.	
St. John, N. B., Canada., 122 German St.	
Syracuse, N. Y., Hippodrome Bldg.	
Toronto, Canada, 7 Front St. E.	
Washington, D. C., Bank of Commerce & Savings Bldg.	

- 1 Wheeling, W. Va., 1141 East Side Chapline St.
Wilkes-Barre, Pa., 47 S. Pennsylvania Ave.
Winnipeg, Man., Canada, 220 Phoenix Blk.
Vancouver, B. C., Canada, 440 Pender St., W.
-

By Mr. CALDWELL:

Q. Have you prepared a statement of the exchanges maintained by the Mutual Company? A. Yes, sir.

- 2 Mr. GROSVENOR: Is this one of the sheets you have been using when you testified?

The Witness: Yes, sir.

Mr. CALDWELL: I offer it in evidence.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 109," and is as follows:

3 **Defendants' Exhibit No. 109.**

MUTUAL EXCHANGES.

Amarillo, Tex., Mutual Film Corporation, 304 East 4th St.

Atlanta, Ga., Mutual Film Corporation, 61 Walton St.

Baltimore, Md., Continental Film Exchange, 28 W. Lexington St.

Boston, Mass., Mutual Film Corporation, 1106 Boylston St.

- 4 Buffalo, N. Y., Mutual Film Corporation, 272 Washington St.

Butte, Mont., Pacific Mutual Film Corporation, Illinois Bldg.

Calgary, Alberta, M. F. C. of Canada, Linham Block.

Charlotte, N. C., Mutual Film Corporation, Com. Nat. Bank Bldg.

Chicago, Ill., The Mutual Film Company, 5 So. Wabash Ave.

Chicago, Ill., H. & H. Film Service Co., 117 N. Dearborn St.

- Cincinnati, Ohio, The Mutual Film Company, 17 Opera Place. 1
- Cleveland, Ohio, The Mutual Film Company, 108 Prospect Ave. S. E.
- Columbus, Ohio, The Mutual Film Company, 422 N. High St.
- Dallas, Texas, Mutual Film Corporation, 1807 Main St.
- Denver, Colo., Mutual Film Corporation, 21 Iron Bldg.
- Des Moines, Iowa, Mutual Film Corporation, Cohen Bldg.
- Detroit, Mich., Mutual Film Corporation, 97 Woodward Ave. 2
- El Paso, Texas, Mutual Film Corporation, 524 Trust Bldg.
- Evansville, Ind., Mutual Film Corporation, Keene Bldg.
- Grand Rapids, Mich., Mutual Film Corporation, 7-8 Hawkins Bldg.
- Harrisburg, Penna., Mutual Film Corporation, Willoughby Bldg.
- Kansas City, Mo., Mutual Film Corporation, Empress Theatre Bldg.
- Los Angeles, Cal., Pacific Mutual Film Corporation, 541 W. 8th St. 3
- Memphis, Tenn., Mutual Film Corporation, Kallaher Bld. 5th Fl.
- Milwaukee, Wis., Western Film Exchange, 507 Enterprise Bldg.
- Minneapolis, Minn., Mutual Film Corporation, 440-445 Temple Court.
- Montreal, P. Q., M. F. C. of Canada, 154 St. Catherine St.
- New Orleans, La., Mutual Film Corporation, 340 Carondelet St.
- New York City, Mutual Film Corporation, 71 West 23rd St. 4
- New York City, Western Film Ex. of N. Y., 145 W. 45th St.
- Oklahoma City, Okla., Mutual Film Corporation, 25 Hudson St.
- Omaha, Neb., Mutual Film Corporation, 1417 Farnam St.
- Philadelphia, Pa., Continental Film Exchange, 902 Filbert St. 4th Fl.
- Philadelphia, Pa., Mutual Film Corporation, 902 Filbert St. 3rd Fl.

- 1 Portland, Ore., Mutual Film Corporation, 72 Broadway St.
 Regina, Sask, Can., M. F. C. of Canada, 312 Westman Chambers.
 Salt Lake City, Utah, Mutual Film Corporation, 15 McIntyre Bldg.
 San Francisco, Cal., Pacific Mutual Film Corporation, 162-64 Turk St.
 St. John, N. B., M. F. C. of Canada, Waterloo St.
 St. Louis, Mo., M. F. C., Benoist Bldg., 9th & Pine Sts.
- 2 Seattle, Wash., Mutual Film Corporation, 1929 Second Ave.
 Sioux Falls, S. D., Mutual Film Corporation, Y. M. C. A. Bldg.
 Spokane, Wash., Mutual Film Corporation, 408 First Ave.
 Springfield, Mass., Mutual Film Exchange, 179 Dwight St.
 Tampa, Fla., Mutual Film Corporataion, 405 Curry Bldg.
 Toronto, Ont., M. F. C. of Canada, 5-6 Queen St.
 Vancouver, B. C., M. F. C. of Canada, 329 Carrall St.
 Washington, D. C., Mutual Film Corporation, 428 Ninth St. N. W.
- 3 Waterville, Me., Mutual Film Corporation, Edith Bldg.
 Wheeling, W. Va., Mutual Film Company, 1502 Market St.
 Wilkesbarre, Pa., Western Film Exchange, 61 S. Pennsylvania Ave.
 Winnipeg, Manitoba, M. F. C. of Canada, Aikens Blk., McDermott Ave.

OTHER EXCHANGES USING THE MUTUAL PROGRAM.

- 4 Pittsburgh, Pa., Pittsburgh Photoplay Co., 412 Ferry St.

By Mr. CALDWELL:

Q. Have you had a similar statement prepared of the branches maintained by the Universal Company and its allied exchanges? A. Yes, sir.

Q. Is that the statement that you have just produced? A. Yes, sir.

Mr. GROSVENOR: Is this the statement you have been using in your examination? 1

The Witness: Yes, sir.

Mr. CALDWELL: I offer it in evidence.

The paper offered is received in evidence and marked "Defendants' Exhibit No. 110," and is as follows:

Defendants' Exhibit No. 110.

2

DISTRIBUTING OFFICES HANDLING UNIVERSAL
SERVICE IN UNITED STATES AND CANADA.

ARIZ., Phoenix, California Film Exchange, Lewis Bldg.

ARK., Ft. Smith, Universal Film & Supply Co.

CAL., San Francisco, California Film Exchange, 54 7th St.

Los Angeles, California Film Exchange, 110 E. 4th St.

COLO., Denver, Wm. H. Swanson Film Co., Railroad Bldg.

CONN., New Haven, Universal Film Exchange of N. Y.,
850 Chapel St. 3

DIST. OF COL., Washington, Washington Film Exchange,
428 9th St. N. W.

FLA., Tampa, Consolidated Film & Supply Co.

GA., Atlanta, Consolidated Film & Supply Co., Rhodes Bldg.

ILL., Chicago, Anti-Trust Film Co., 128 W. Lake St.

Laemmle Film Service Co., 204 W. Lake St.

Standard Film Exchange, 172 W. Washington.

IND., Indianapolis, Central Film Service Co., 113 W.
Georgia St.

IA., Des Moines, Laemmle Film Service, 421 Walnut St. 4

KAN., Wichita, Universal Film & Supply Co., 155 N. Main
St.

KY., Louisville, Standard Film Exchange.

LA., New Orleans, Consolidated Film & Supply Co., Maison
Blanche Bldg.

MD., Baltimore, Baltimore Film Exchange, 412 E. Balti-
more St.

MASS., Boston, New England Universal Film Ex., 1100
Boylston St.

- 1 Springfield, Universal Film Exchange of N. Y., 317
 Main St.
MICH., Detroit, Detroit Universal Film Co., 87 Woodward
 Ave.
 Grand Rapids, Universal Film Exchange, 5 Haw-
 kins Block.
MINN., Minneapolis, Laemmle Film Service, 252 A Henne-
 pin Av.
MO., Kansas City, Universal Film & Supply Co., 12th and
 McGee Sts.
 St. Louis, Universal Film & Supply Co., 804½ Pine St.
2 MONTANA, Butte, Wm. H. Swanson Film Co.
NEB., Omaha, Laemmle Film Service, 1312 Farnam St.
N. J., Newark, Royal Film Exchange, 286 Market St.
N. Y., Albany, Rex Film Exchange, 7 Maiden La.
 Buffalo, Victor Film Service, 39 Church St.
 N. Y. City, Universal Film Exchange, 111 E. 14th St.
 N. Y. City, Universal Film Exchange (Mecca Branch),
 1600 B'way.
N. C., Charlotte, Interstate Films Co.
O., Cincinnati, Cincinnati Buckeye Film Exchange, 236 W.
 4th Ave.
3 Cleveland, Victor Film Service, Prospect & Huron Sts.
 Toledo, Toledo Film Exchange Co., 439 Huron St.
OKLA., Oklahoma City, United Motion Picture Co., 112
 Main St.
ORE., Portland, Film Supply Co. of Oregon, 385½ Adler St.
PA., Harrisburg, Interstate Films Co.
 Philadelphia, Eagle Projection Co., 1304 Vine St.
 Philadelphia, Interstate Films Co., 1304 Vine St.
 Philadelphia, Philadelphia Film Exchange, 121 N.
 9th St.
4 Pittsburgh, Independent Film Exchange, 415 Ferry St.
 Wilkes-Barre, Exhibitors Film Exchange, 61 So. Penn
 Ave.
TENN., Memphis, Consolidated Film & Supply Co., Falls
 Bldg.
TEX., Amarillo, Universal Film & Supply Co.
 Dallas, Consolidated Film & Supply Co., 1310 Elm St.
 El Paso, Consolidated Film & Supply Co., 805 Miles
 Bldg.
 El Paso, Wm. H. Swanson Film Co., Little Caples
 Bldg.

UTAH, Salt Lake City, Wm. H. Swanson Film Co., McIntyre Bldg. 1

W. VA., Wheeling, Universal Film Exchange.

WIS., Milwaukee.

WASH., Seattle, Film Supply Co., 1301 Fifth Ave.

Spokane, Film Supply Co., 211 Jones Bldg.

CANADA, Calgary Alta, Canadian Film Exchange, Monarch Theatre Bldg.

Edmonton Alta, Canadian Film Exchange, Monarch Theatre Bldg.

Montreal, Que., Canadian Film Exchange, 295 St. Catherine St. 2

Regina, Sask., Canadian Film Exchange, Rex Theatre Bldg.

Saskatoon, Sask., Canadian Film Exchange, Hunt Block.

Toronto, Ont., Canadian Film Exchange, 11 Richmond St. W.

Winnipeg, Man., Canadian Film Exchange, Monarch Theatre Bldg.

Vancouver, B. C., Canadian Film Exchange, 516 Holden Bldg. 3

Mr. GROSVENOR: Were these prepared by yourself, or were they prepared by them? Did they furnish you with these lists, or did you make them up?

The Witness: I made them up from my own information that I could get, and from my own knowledge.

Mr. GROSVENOR: I object to these last two statements, on the ground of insufficient knowledge on the part of this witness, the sources of his information not being disclosed. 4

By Mr. CALDWELL:

Q. Do you happen to know, Mr. Dyer, whether that has been compared with the advertisements of the Mutual and Universal companies in the Moving Picture World? A. That list has been compared with the advertisements of those two concerns in their own house organs or trade papers, but I

1 know of my own knowledge and my information that I get,
of course, in the handling of the business, that those branches
that I have testified to do in fact actually exist, and that we
are encountering the competition in those territories that I
have described.

2 Mr. CALDWELL: I offer in evidence a certified copy
of the Opinion of Judge Kohlsaat, filed in the case of
Thomas A. Edison against Selig Polyscope Company,
United States Circuit Court for the Northern District
of Illinois, Eastern Division, marked "Filed January
29th, 1910, as of October 24th, 1907." This is the
opinion referred to in Mr. Dyer's testimony on Mon-
day, and I offer it in evidence because I am informed
that it has not been officially reported in the Federal
Reporter or in any other report, and I ask that it be
copied in the record for that reason.

3 Mr. GROSVENOR: I do not understand counsel's
statement that it is filed January 29th, 1910, as of
October 24th, 1907. When was the opinion handed
down? I object to the statement of counsel, in intro-
ducing it, that it was the opinion referred to by the
witness on Monday, the proper way being to show
the opinion to him and asking him to identify it and
connect it with this testimony.

Mr. CALDWELL: The certificate of the Clerk, of
course, speaks for itself. It is marked and endorsed,
"Filed January 29th, 1910, as of October 24th, 1907."

By Mr. CALDWELL:

4 Q. Is that the opinion, Mr. Dyer, to which you referred
in your testimony on Monday? A. Yes, sir.

Mr. GROSVENOR: When was that opinion given, Mr.
Dyer?

The Witness: Well, in the latter part of 1907, and with
this date before me, I should say October 24th, 1907.

Mr. GROSVENOR: But do you know?

The Witness: No, sir, I don't know the exact date.

Mr. GROSVENOR: I object to it as improperly proven. 1

Mr. CALDWELL: It is a certified copy under the seal of the court and authenticated in such a way as to entitle it to be admitted in evidence.

Mr. GROSVENOR: I object to it also on the ground it is immaterial.

The paper offered is received in evidence, and marked "Defendants' Exhibit No. 111," and is as follows:

Defendants' Exhibit No. 111.

2

IN THE

CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF ILLINOIS—EASTERN DIVISION.

THOMAS A. EDISON,

v.

SELIG POLYSCOPE COMPANY.

Gen. No. 26,512.
Kohlsaat, J.

3

Bill to restrain alleged infringement of re-issue patent No. 12,037, granted to Thomas A. Edison, September 30, 1902, for kinetoscope. The original patent was No. 589,168, dated August 31, 1897. The cause is now before the court on motion for preliminary injunction. This suit was commenced November 7, 1902, and has been held by stipulation of the parties to await a decision of the United States Circuit Court of Appeals for the Second Circuit in a suit to restrain infringement of the patent herein involved, brought by the complainant herein against American Mutoscope and Biograph Company, it being agreed that the decision in that case would have an important bearing upon the questions involved herein. It was stipulated that the holding of this case until after final hearing of the New York case should not prejudice complainant's right to move for a preliminary injunction at any time.

4

On March 5, 1907, the Circuit Court of Appeals for the

1 Second Circuit rendered a decision finding Claims 1, 2
and 3 of the patent valid and infringed. The testimony
taken in that case, has, by stipulation, been made a part
of the record in the case at bar, and this, as well as the
opinion of the Court of Appeals, shows a full hearing
upon the merits. The validity of the patent in suit may,
therefore, for the purposes of this hearing be considered
as established.

2 Defendant admits the use of two kinds of machines,
both of which are charged to infringe patent in suit; one of
these is made in accordance with Letters Patent No. 712,-
462, issued October 28, 1902, to William N. Selig for
improvements for exhibiting and taking pictures; the
other is what is known as the Lumiere camera, which is
the one described and claimed in Letters Patent of the
United States No. 579,882, issued March 30, 1897, to A.
& L. Lumiere of Lyons, France.

3 The present motion is based upon the pleadings and
proofs heretofore taken in this case, the testimony and
evidence taken in the suit against the American Mutoscope
and Biograph Company, the pleadings and decision of
the Circuit Court and the Circuit Court of Appeals for the
Second Circuit, and certain affidavits. Models of the
Selig camera, the Edison camera, and of the infringing
device of defendant in the mutoscope case, *supra*, known
as the Warwick camera, are before the court, and the
affidavits of experts have been presented on behalf of
complainant to show that the Selig and Lumiere machines
of defendant herein are substantially identical in material
respects with the Warwick camera of the New York case.
Defendant makes no attempt to rebut this evidence, but
urges that either of the following grounds is sufficient to
4 warrant the denial of this motion.

1st. That defendant is operating under a patent issued
to it October 28, 1902, on an application filed September
6, 1900, which exactly describes and exactly claims the
combinations charged to infringe. Both complainant and
defendant, therefore, have patents for their respective
machines. "In such cases," says counsel for defendant,
"the courts have held times without number, that there
was a presumption that there was a substantial or ma-

terial difference between the inventions, and that one did not infringe the other.” 1

2nd. “Defendant’s machine charged to infringe the Edison reissue patent sued on, was made and put into use long prior to the application for the reissue, was not an infringement of the claims of the original Edison patent, was made and put into use rightfully, because not an infringement of any valid claim of the original Edison patent, and is entitled to protection under the doctrine of intervening rights.”

That there is such a presumption in favor of the later patent, as stated in defendant’s first ground, must be admitted. It is not, however, a conclusive presumption, and there may be evidence to overcome it. 2

The second ground urged by defendant to defeat this motion can, of course, only apply to acts occurring prior to the reissue. It would seem a good defense as to those acts. Defendants, however, admit in the affidavit of William N. Selig, the sale, since the reissue, of one camera made under the Selig patent, and the purchase and use of three Lumiere cameras. An injunction does not affect past acts; it is designed for the prevention of those which might be committed in the future, and if defendant’s device be found to infringe complainant’s patent, the admitted use since the reissue would seem sufficient ground to restrain such future acts. The sole question before the court then is: Do the Selig and Lumiere machines infringe the Edison reissue patent in suit? 3

The original patent, No. 589,168, was before the Court of Appeals for the Second Circuit in a suit between the same parties and after a full hearing, Claims 1, 2, 3, 4, and 5 were held invalid, as claiming more in view of the prior art than patentee was entitled to. The court there found that Edison “was not a pioneer, in the broad sense of the term,” and said that the real invention, if it involved invention as distinguished from improvement, probably consisted in details of organization, by which the capacity of the reels and moving devices are augmented and adapted to carry the film of the patent rapidly and properly (114 Fed. Rep., 926). The patentee, thereupon applied for and obtained the reissue patent in suit, Claims 1, 2, and 3 of which are as follows: 4

1 “1. An apparatus for taking photographs suitable for the exhibition of objects in motion, having in combination a camera having a single stationary lens; a single sensitized tape-film supported on opposite sides of, and longitudinally movable with respect to, the lens, and having an intermediate section crossing the lens; feeding devices engaging such intermediate section of the film and moving the same across the lens of the camera at a high rate of speed and with an intermittent motion; and a shutter exposing successive portions of the film during the periods of rest, substantially as set forth:

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 “2. An apparatus for taking photographs suitable for the exhibition of objects in motion, having in combination a camera having a single stationary lens; a single sensitized tape-film supported on opposite sides of, and longitudinally movable with respect to, the lens, and having an intermediate section crossing the lens; a continuously-rotating driving-shaft; feeding devices operated by said shaft engaging such intermediate section of the film and moving the same across the lens of the camera at a high rate of speed and with an intermittent motion; and a continuously-rotating shutter operated by said shaft for exposing successive portions of the film during the periods of rest, substantially as set forth.

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 “3. An apparatus for taking photographs suitable for an exhibition of objects in motion, having in combination a camera having a single stationary lens; a single sensitized tape-film supported on opposite sides of, and longitudinally movable with respect to, the lens, and having an intermediate section crossing the lens; a continuously-rotating driving-shaft; feeding devices operated by said shaft engaging such intermediate section of the film and moving the same across the lens of the camera at a high rate of speed and with an intermittent motion; a shutter exposing successive portions of the film during the periods of rest; and a reel revolved by

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said shaft with variable speed for winding the film thereon after exposure, substantially as set forth.”

The invention is a narrow one, and the proper interpretation of the claims, so as to confine the patentee to his real contribution to the art, has been, as the decision of the Circuit Court and the Circuit Court of Appeals show, a matter of no little difficulty. But the Court of Appeals has construed the claims of the patent, and it has been held that on a motion for preliminary injunction the court should be “guided and governed by the construction which was given to the patent in the adjudicated case upon which the special presumption of validity is based, Walker on Patents, Sec. 676, citing Mallory Mfg. Company v. Hickok, 20 Fed Rep., 116; Carter-Crume Co. v. Ashley, 68 Fed. Rep., 379, “and where the facts are substantially the same in the two cases, the former decision will be followed. S. S. White Dental Mfg. Co. v. Johnson, 56 Fed Rep., 263. The Selig and Lumiere cameras are substantially identical with the Warwick camera in those features found by the Court of Appeals to be of the essence of the invention of Edison. The description which the Circuit Court of Appeals of New York applied to the Warwick camera may be applied literally to defendant’s Selig camera. The court said:

“The engaging rollers, which advance the film after it has passed the film-slide or guide where exposure is made and which deliver it to the take-up reel are located about half way between the take-up reel and the film-slide and their movement is so regulated as to other parts that there will always be a loop of slack film between said rollers and the film-slide. In consequence, the film cannot be advanced by any revolution of these rollers, as was the case with the Biograph camera. The film as it comes from the delivery roll has a row of holes along each edge; when it is in the film-slide these holes are engaged by means of a reciprocating two-tined fork, carrying small studs or pins which pass into the holes on the opposite edges of the film, in the same way as the sprockets pass into the holes in the complainant’s machine. As these studs or

- 1 pins are inserted on the down stroke of the fork and withdrawn on the up stroke, the film is intermittently fed across the field of the lens. These pins or studs do not hold back the film against any forward pull, because there is no forward pull to be resisted; neither an intentional forward pull as found in the biograph, nor an accidental or occasional forward pull as when the film is taut between the film-slide and take-up roll as found in the camera of the patent; when the pins are withdrawn the film lies inert in the film-slide.”
- 2 But the ‘intermediate section’ is moved across the lens just by the interlocking engagement between a sprocket or pin and a hole in the film, thereby moving it positively, regularly, evenly and very rapidly without jarring, jerking or slipping—the parts being arranged so that the movement shall be intermittent.”

- 3 The Lumiere machine has no take-up reel, the film being allowed to lie loosely in the bottom of the box, and there are no rollers engaging the film, either before or after exposure. It does have the fork with the studs or pins, and its mode of operation is otherwise the same as that of the Warwick camera, as above described by the Court of Appeals.

The motion for a preliminary injunction is, therefore, granted.

(Endorsed) Filed Jan. 29, 1910, as of Oct. 24, 1907.

H. S. STODDARD,
Clerk.

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IN THE

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS—EASTERN DIVISION.

I, T. C. MacMillan, Clerk of the District Court of the United States of America, for the Northern District of Illinois, DO HEREBY CERTIFY the above and foregoing to be a true and correct copy of the OPINION of Hon. Judge C. C. Kohlsaat, filed Jan. 29, 1910, as of Oct. 24, 1907, in the case of THOMAS A. EDISON v. SELIG

POLYSCOPE COMPANY, as the same appears from the original records and files now remaining in my custody and control. 1

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 26th day of March, A. D. 1912.

[SEAL.]

T. C. MACMILLAN,
Clerk.

By

JOHN H. R. JAMES,
Deputy Clerk. 2

Whereupon, at 4:40 P. M. on this Wednesday, the 12th day of November, 1913, the hearings are adjourned until Thursday, November 13th, 1913, at 10:30 A. M., at the Hotel Manhattan, New York City.

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1 IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,
Petitioner,

v.

2 MOTION PICTURE PATENTS Co. and others,
Defendants.

No. 889.

Sept. Sess., 1912.

NEW YORK CITY, November 13, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 13, 1913, at Room 159, Manhattan Hotel, New York City.

3 Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

4 Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

The Examiner: Defendants' Exhibit No. 111, being certified copy of the opinion of Judge Kohl-

saat, in case of *Thomas A. Edison v. Selig Polyscope Company*, United States Circuit Court for the Northern District of Illinois, Eastern District, has been returned to Mr. Caldwell.

Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. CALDWELL:

Q. Mr. Dyer, in testifying yesterday about the territory served from your office maintained at Oklahoma City, Oklahoma, at page 1597 of the record, folio 1, you stated that that territory included some towns in the northern part of Texas, and some customers, as you recalled, in Arkansas and Indian Territory. Did you mean Indian Territory? A. No, the fact had momentarily slipped my memory that the territory of Oklahoma and the Indian Territory were united and constituted the State of Oklahoma. I should have said the Indian counties of Oklahoma.

Q. In testifying yesterday, your recollection was not quite clear as to the territory served by your competitors from branches maintained by them at Amarillo, Texas. Have you since refreshed your recollection on that subject? A. I was not certain whether the Amarillo branches of our two competitors competed directly with our Dallas branch, or whether direct competition existed. Amarillo is a town in the Panhandle of Texas to the west of Oklahoma City, and eastward from Mexico. It lies within the territory circumscribed by our Dallas, Oklahoma City and Denver branches, where our competitors are also located. Their branches at Amarillo are, therefore, more directly in the center of this territory than we are. In other words, we have to reach into the territory from the outside, towards the center, whereas they not only reach in from the outside towards the center, but reach outwardly from the center to the circumference of the territory.

Q. You stated yesterday, some of the benefits or advantages resulting to the public from the organization and operation of the Motion Picture Patents Company. Have you anything to add to that statement? A. Yes, I would like to make a further addition, because the matter, I think, is important. The formation of the Patents Company, with the resulting development in the building of new theatres,

1 extended the number of theatres, small theatres, places
where the poor man might take his family in the evening to
see a clean, instructive, and entertaining show. The sa-
loon is no longer the poor man's club, and all over the coun-
try it will be found that the moving picture theatre has
seriously interfered with the saloon business. In fact, our
most bitter opponents are the saloon interests, and I know
of one case in Ohio where the number of saloon licenses
was reduced from thirty-two to seventeen, owing to the
presence in that town of moving picture theatres. Whereas,
2 formerly the poor man would go to the saloon and spend
the evening, paying twenty-five cents for beer, he now takes
his family to the moving picture show at the same price.

Q. You have spoken about the General Film Company
and its branches. Where is the main office of the General
Film Company located? A. At No. 200 Fifth Avenue, in
the Fifth Avenue Building, New York City.

Q. Are any motion pictures distributed from that office?
A. No, sir, that is purely an executive and administrative
office, where the bookkeeping department is located, and
the other executive departments.

3 Q. When a branch of the General Film Company orders
pictures from a producer, or importer, are the pictures sent
by the producer, or importer, first to the main office of the
General Film Company, or to some warehouse or other
place maintained by it, and sent from there to the branches,
or are the pictures sent direct from the producer and im-
porter to the branch? A. The plays are sent direct from
the producer to the branch.

4 Q. Mr. Dyer, will you explain in detail the practical
workings of an exchange, just how a film is received from the
producer or importer, what becomes of it after it is received,
how the films are booked by the booking office of the branch,
how they are sent from the branch to the exhibiting theater,
and how they are returned by the exhibiting theater to the
branch, and what becomes of the films in the interim between
their return by one exhibitor and the delivery of that same
film to another exhibitor? A. Each branch of the General
Film Company is a distributing point or booking office, occu-
pying a middle position between the producers of the pic-
tures and the theatres in which they are shown. At each
branch there is a stock of films kept in the usual cylindrical
boxes, and generally in fireproof vaults, so as to minimize the

danger from fire. New films are coming into the branch from the producers almost daily, and old films are, after the lease period has expired, returned to the producers, generally monthly. So that the stocks of films do not materially change except that there is a slow growth due to the gradual increase of the number of films released. When the film is received from the producer it is generally inspected so as to be sure that it is in good condition, and it is then numbered by means of a perforating machine, something like a check punch, so that it can be identified. It is then placed in the stock in its proper place. At each branch there are one or more bookers who are the men who have the duty of making up the programs of the theatres, and whose job it is to keep the films working as actively as possible. These bookers are supposed to have a general knowledge of the character of the films made by the several producers, and are also required to keep themselves informed as to the character of individual films so that they will know the kind of plays they are handling. They are also required to know the general character of the theatres that they supply so as to make the programs as appropriate as possible. Where an exchange necessitates the employment of more than one booker, each booker has his own list of exhibitors that he handles. In most of the exchanges there are definite booking systems in vogue so as to keep a written record of the films to enable the manufacturers to tell whether they are being properly worked or not; and these booking systems differ more or less in the various branches. A theatre requiring service of a branch arranges with the manager to receive a certain number of films per week, changed a definite number of times, and the age of the film is determined entirely by negotiations between the theatre and the manager. Sometimes requests are made for ages of film that we are not able to supply, so that some adjustment in this respect has to be made. The booker is advised of the age of the film the particular customer has contracted for, and endeavors, as far as possible, to supply films of that age, and to make the program balance, and be as interesting and as adaptable as possible to the conditions of the particular theatre. In the case of theatres located in the same city as the branch, or in the neighborhood of that city, the theatres generally send messengers into the branch to get their films in the forenoon, but in other cases the films are sent to the exhibitors by express. Packing cases are used containing gen-

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1 erally three reels, and each case is marked with the number
corresponding to the particular customer. In some places,
and particularly in New York, the General Film Company
maintains, or has made arrangements with an agency to col-
lect shows from the theatres in the city, after they have been
exhibited, and bring them back to the exchange, but ordi-
narily the theatre sends the film back to the branch either by
a messenger or by express. In a few of the very active ex-
changes, as, for example, the exchanges in Philadelphia, New
York, Boston, Chicago and other large cities, the films are
2 coming back into the exchange from about midnight onwards,
and as soon as they are received they are inspected carefully,
and any repairs made, and placed in stock, so that they can
go out by eight o'clock in the morning. I think that in almost
all the branches they maintain night shifts, so that the
branches are working generally at all times. In those
branches where poster departments are located, when we
send out the films by express we also include the necessary
posters contracted for, or, if the messenger of the theatre
calls at the branch, he gets the posters at the same time, and
takes them with him. The great problem, as I have stated
3 before, is to handle an enormous number of reels of great
variety, involving many changes per week, and to deal with
the number of theatres in such a way that the films will be
moving to the maximum extent. In the whole country, I
should say, that there are at least twenty thousand moving
picture plays moving at all times from or towards theatres,
and back to the exchanges.

Q. Does it sometimes happen that an exhibitor will fail
to return a picture the following day, in time for you to
use it with a customer who has contracted for it, for that
particular day? A. That sometimes happens, yes, sir.

4 Q. With more or less frequency? A. Well, I presume it
seems more than it is, because there is always so much
noise over it, because it seems like a very important thing,
for if a theatre has a film booked for a certain evening, and
he comes down to the office and finds that he cannot get
the film, it is naturally very annoying to him. This hap-
pens, sometimes, by faults of express companies.

Q. But whenever it does happen, does it represent an

actual loss to the exchange? A. Oh, yes, that means that we lose that particular film for that time, and we always have to give the exhibitor something to take its place, of equivalent age, and endeavor to satisfy him with a substitute reel. 1

Q. Where the exhibiting theatre is located at some distance from the exchange, or branch, are films always returned by the exhibitor to the exchange before they are sent out to the next exhibitor? A. Not always, but ordinarily so. As I stated yesterday, in Florida, we send out reels on a circuit, and they may go to eight or ten exhibitors before coming back to the exchange. 2

Q. Does the period of transit there represent a loss to the exchange? A. Theoretically, it would not represent a loss, but in actual practice it does, because it is difficult to get a theatre to take the same interest in keeping the films moving, as we have, and, while the films ought to be passed around the circuit in ten days, we find that it will frequently take a month.

Q. I think you have stated that the maximum value of film to the exchange, is based upon its constant use? A. That is true. 3

Q. If more or less time is lost during those periods of transit back and forth, does that not represent so much earning power deducted from the film? A. Oh, yes. I thought you had in mind only the circuits. Of course, where the film is in transit there is a loss in its earning power.

Q. Have you stated yet, Mr. Dyer, what facilities are maintained at the branches of the General Film Company, for inspecting, cleaning, and repairing film between these periods of use in the theatres? A. Yes, we maintain at each branch an inspection department, generally of two or three shifts, so that they keep working all the time, composed of from two to as many as fifteen girls, or young men, and each reel coming in is carefully unwound by these inspectors, who run the film between their thumb and forefinger so as to detect broken places in the edges, and in case the break is a bad one, a splice is made, and these inspectors also carefully inspect the film, see that it is kept clean, free from dirt, and kept in good condition; and in some branches they actually use cleaning machines that subject the film to a cleaning operation, to wipe off the 4

1 dirt and oil. A great deal of oil gets on the film from the projecting machine, and this oil collects dirt and dust, that makes spots on the film, which show on the screen.

Q. Do you know to what extent exchanges, prior to the formation of the General Film Company, maintained facilities for inspecting, cleaning, and repairing films? A. Not any more than to say that any inspection or repairing, as far as I knew, was less effective than that used by the General Film Company, or none at all.

2 Q. Will you state in what receptacles these films are placed by the producer, or importer, in order to be sent to the branches of the exchanges? A. In tin boxes.

Q. And what is the weight of a single reel of a thousand feet in a box, including the box? A. I have forgotten, but I think somewhat over five pounds.

Q. Do you know whether any of these boxes are ever sent by parcel post? A. I do not.

Q. In sparsely settled territory where you could not serve a theatre, either by messenger or by express, it is feasible to serve by parcel post? A. I am not able to state. I think it might be.

3 Q. Mr. Dyer, do you know of a single city or town anywhere in the United States with a population sufficient to support a motion picture theatre in which no such theatre is located? A. No, I do not. The only city that I know of that came near fitting your definition, is my own town of Montclair, where we built a moving picture theatre for the first time this year, but Montclair did not have trolley cars until about five years ago.

4 Q. Do you know of any city or town in the United States, where a motion picture theatre is now being conducted that cannot obtain its service either from the General Film Company, or one or both of its competitors? A. No, I do not.

Q. And it is entirely optional with any such theatre from which exchange it will take its service? A. Yes, absolutely so.

Q. And the theatre is entirely free to decide that question for itself? Is that correct? A. That is correct, except that the Mutual Company has, in a certain number of places, sold the exclusive right to its service, which would prevent other theatres possibly from getting the Mutual

program in those particular localities, but with that exception, I know of no reason why any theatre in the United States should not be able to get its service from either of the three companies. 1

Q. Mr. Dyer, you have testified relative to the competition which the General Film Company has with its two leading competitors, the Mutual Company and the Universal Company. Has it any other competition, particularly in the matter of special feature films for special service, or exclusive service, and if so, will you please state what it is? A. We have a great deal of competition in this respect. These feature films have been appearing in greater and greater number in this country, and are handled by various people, such as the Famous Players Film Company, Warner Features Company, and the various State rights concerns, that is to say, people who have acquired the right for a particular State, or series of States, in certain films. I refer to such features as "Cleopatra" by the Helen Gardner Company, pictures made by the Gene Gauntier Company, and many others. The trade papers are filled with advertisements of these films. Our theatres are using these films to quite a considerable extent, and their introduction into our theatres of course reduces the value of our service or entirely supplants it. For instance, we have theatres in the country who are taking the Famous Player service, and, as I recall, this takes away our revenues for three days every other week. The introduction of these special features into the service of our theatres is quite an important factor at the present time in the business. 2 3

Q. Do you know what the Famous Players Film Company, for instance, are doing by way of competition with the General Film Company, and who are interested in it? A. The Famous Players Company is a concern managed by Mr. Daniel Frohman, and they are making a series of thirty films per year, two in one month, and three in the next month. These films are based on famous plays, such as the "Prisoner of Zenda," the "Tess of the D'Urbervilles," "In the Bishop's Carriage," etc., and generally a well-known star appears in each one, such as Mrs. Fiske. These plays are generally from three to five reels. The Famous Players Company makes arrangements with theatres, and very often with our customers, to take their service for a year, and the films appear 4

- 1 in our theatres generally every other week for from one to three days.

Q. And when they do appear in your theatres, the Famous Players Company is depriving you of that service during that time; is that correct? A. That is not only correct, but it is also a fact that owing to the expensive character of these Famous Players films generally the theatre reduces the price, or curtails its service with us; takes on a cheaper service from the General Film Company.

Q. In what class of theatres is that service customary?

- 2 A. Generally in the large theatres.

Q. State what character of customers you are losing as a result of the competition of the Famous Players Company?

A. I do not say we are losing customers—I say we are losing business, and losing money.

Q. From what class of your customers? A. Generally the very large theatres.

- Q. Do you know in what territory the Famous Players Film Company are operating? Is it limited to New York or Chicago, or is it general throughout the country? A. General throughout the country. I know specifically that they are competing with us in the New England territory, in the Atlanta territory, in the Chicago territory, and in the California territory and elsewhere.

- Q. And what is the character of the service maintained by the Warner Feature Film Company? A. That concern handles feature films made either in America or abroad, and puts them out in as many theatres and at the best prices they can get. I do not think they have started a regular defined service as yet, although they are advertising that they expect to do so. They have offices all over the country, and men going around among the exhibitors trying to interest them in their feature films.

Q. Is it not a fact that this concern or its predecessor in business, has been actually supplying special feature films throughout the United States or in portions of the United States? A. Yes, sir.

Q. Do you know anything about the business conducted by the Exclusive Supply Corporation? A. No, sir, I do not. Not specifically. I do not know of any instances where those films have been specifically brought to my attention.

Q. Do you know whether the Famous Players Film Company supply an exclusive service? A. Oh, yes. 1

Q. Explain what is meant by exclusive service as applied to the motion picture business. A. An exclusive service would be one in which the guarantee goes with certain films that they will be shown exclusively in a single theatre in a given territory.

Q. And if shown at another theatre, of course the service loses its exclusive character, does it not? A. Yes, sir.

Q. And loses entirely the value which was contracted for? A. Very largely.

Q. I will ask you to read portions of the testimony of the witness Swanson, a witness called on behalf of the petitioner, as I wish to ask you some questions about it. Will you read pages 315 and 316, commencing at folio 1 on page 315? A. Yes, sir, I have read this testimony. 2

Q. Now, will you read page 318, Mr. Dyer? A. Beginning at what point, Mr. Caldwell?

Q. Beginning at the top of the page, and reading down to the end of the second question. A. Yes, sir.

Q. Now, will you read at page 319, folio 4? A. Yes, sir, I have also read this.

Q. Mr. Swanson quotes you as saying at the Film Service Association meeting, as follows: "Mr. Dyer did most of the explaining regarding patents, and the ideas of what they were going to do under those patents. They were going to charge more for the film and more for the projecting machines under those patents." Do you recall whether you made that statement or not? A. No, sir, I did not make that statement. 3

Q. Continuing, the witness says: "He further explained that we must always bear in mind that we were not to put too much stress on the patents, however—that the proposition that they had formed was ninety-five per cent. commercial and five per cent. legal. That is, that this formation was ninety-five per cent. commercial and five per cent. legal. That they had patents, but that there had always been more or less litigation over this thing, and perhaps always would be, but that the success of the entire matter depended upon the commercial organization." Do you recall whether you made any such statement as that? A. No, sir, I do not recall hav- 4

1 ing made that statement. I do not recall having made any
attempt to weigh specifically the advantages of the patents
and the advantages of the commercial results growing out of
the patents. I recognized, of course, that the value of the
patents would not be so great as the development of the com-
mercial side, or, in other words, that any contribution that
might be made under the patents would be small compared
to the commercial advantages accruing from the arrangement
that brought an end to the patent litigation, but I do not
recall specifically having attempted to state the two proposi-
2 tions in terms of percentage. If Mr. Swanson means by his
testimony that we looked upon the patents as unimportant,
that is, entirely incorrect, because the patents at all times
were regarded by us as the basis, the very foundation, upon
which the licensing plan rested.

Q. Again, at page 319, he quotes you as having made the
same statement at the meeting of the Film Service Associa-
tion in Buffalo. I think you have already stated that you
were present at that Buffalo meeting. Did you make any
such statement as that at the Buffalo meeting? A. Not that
I recall, no, sir. I always recognized that the contribution
3 paid under the patents would be less than the resulting com-
mercial advantages.

Q. Again, on redirect examination, at page 768, he says
that it was a favorite expression of yours, "Five per cent.
legal and ninety-five per cent. commercial," and through the
medium of the patents they could bring about a commercial
organization that would be beneficial to those interested.
Was that a favorite expression of yours? A. I don't think
so, although I always recognized, of course, that the value of
the patents would necessarily depend only upon the commer-
cial success which our licensees met with, or, in other words,
4 unless they succeeded commercially, we would not profit
under the patents.

Q. Mr. Dyer, will you turn to page 320 of the record,
commencing at the middle of the page, at the question asked
by Mr. Grosvenor, and reading to the bottom of the page.
A. Yes, sir, I have read this before.

Q. So your recollection is refreshed? A. Yes, sir.

Q. Mr. Swanson there states that he came here as a
committee of one, representing all of the Edison film ex-
changes in Chicago, that he arrived on Saturday, the exact

date he cannot recall, and called you up on the telephone at Orange, to make an appointment, as he stated, "to discuss conditions under those patents, which we purposed to make to him." That you were going hunting, and would not be back until Monday, and he said he would submit his proposition over the telephone, and he then said—now quoting his exact language: "We, in Chicago, have decided that we will combine our business and make the Edison Company a present of one-half of all our interests in our combined businesses, if they can show us where they can shut out the independent competition we are now having in Chicago." He continues by saying that, quoting you, "He said that was a great idea. He had not thought of it, but that he would work it out as soon as he came back from his hunting trip, and he thought very likely it could be accomplished, and it later was, except that they bought the exchanges out altogether." State what truth, if any, is there in this testimony? A. I do not think there is any truth in it. I do not recall having had any conversation with Mr. Swanson over the telephone at any time. I am quite sure that I never met Mr. Swanson more than three or four times in my life, although I remember very well that the second time he met me he called me "Frank," and has always done so.

Mr. GROSVENOR: And you called him "Bill" yesterday, when you referred to him, in examination?

The Witness: I reciprocated the compliment, yes, sir. I never went hunting in my life, so that he is certainly wrong in that statement. I am certain that he never made any suggestion to me about giving the Edison Company a present of half of the exchanges in Chicago. That would have been a very silly suggestion, indeed, and I am quite certain that Swanson never could have made it. In whatever talks I may have had with Swanson, or anybody else, on the subject of independent competition in Chicago, I always had in mind the possibility of stopping this by patent suits, and in no other way.

Q. Now, will you read pages 315 and 316, commencing on page 315, near the top of the page, the first question by Mr. Grosvenor? A. Yes, sir, I have read this testimony.

- 1 Q. In connection with the suits brought by the Edison Company against Kleine and his licensees in Chicago in 1908, Swanson says that he had several conversations with you about this, that he complained to you about Kleine cutting prices of films to a ruinous basis, and you said you thought you could find a way of stopping it. He asked you how, and you said you would have an attorney in Chicago bring suits against Kleine's exhibitors, that your purpose was to bring a multiplicity of suits and harass them to such an extent, that they would eventually stop using Kleine's goods, that you stated that these suits were brought for the purpose of intimidating exhibitors. Further, that you wanted to find exhibitors or defendants that did not have too much money, but had some resources, and were responsible, as they would have more regard for the dangers of litigation than some more irresponsible exhibitors, and that you had Mr. Mithin, who was western secretary of the Film Service Association, as he says, investigate the financial standing of the exhibitors before suit was brought. State what truth there is, if any, in the foregoing testimony?
- 2 A. I do not think there is very much truth in it. My recollection is that Kleine did not cut prices, and that the troubles in Chicago were due entirely to the price-cutting and unfair competition on the part of the licensed exchanges. A number of the suits, a considerable number of the suits, were brought in Chicago, against infringing theatres, but these suits were brought for the purpose of enforcing our patent rights. I do not recall having talked with Mr. Swanson about these suits, but may have done so. His troubles were not competition from Kleine, but competition from other licensees. One of the criticisms I had towards the exchanges in Chicago was that they kept constantly trying to take business from each other, instead of trying to get business from the independents, as we called them. Mr. Swanson, at one of the few talks I had with him, recommended his friend, Mr. Mithin, to me, as an attorney, but according to my best recollection, Mr. Mithin had nothing to do with the suits that were brought against the theatres, although he may have done so.
- 3
- 4

Mr. GROSVENOR: He says right here he did not have anything to do with it.

The Witness: My best recollection is that Mr. Mithin was employed to look up evidence against a duping concern in Chicago. This work was quite limited.

1

By Mr. CALDWELL:

Q. Then were these suits brought by the Edison Company against these exhibitors for the purpose of intimidating them? A. No, sir.

Q. And taking them away from Kleine? A. No, sir. The suits were brought against infringers of our patents for the purpose of enforcing the patents.

2

Q. That, of course, was during the period of the so-called warfare between the Edison and Biograph Camps?

A. In a period of very bitter and very active hostilities. Mr. Swanson, in his evidence, states that it was my purpose to find exhibitors who did not have too much money, but had some resources and were responsible, but I have no recollection of this. I do not recall that the character of the infringers was looked into in any way in connection with those suits.

Q. If any such conversation was had, you would be apt to recollect it, would you not? A. I think I would, although, of course, a lot of things were said that I cannot recall. I am quite sure that this conversation that Mr. Swanson speaks of did not take place.

3

Q. In connection with the suits brought by the Edison Company against Kleine and his customers in 1908, Swanson says, referring to the same pages of the record there, that he had several conversations with you about this. Do you recall having more than one conversation with Swanson in Chicago? A. No, sir, I do not.

Q. He further says that he complained to you about Kleine cutting prices of film to a ruinous basis. Do you recall stating anything of that kind? A. No, sir, I have already stated that I do not think that Kleine did cut prices. The trouble entirely was in the unfair struggle between the licensed exchanges in Chicago to get customers from each other.

4

Q. He says that he asked you if it was possible to eliminate that ruinous competition, and you said that you did not think that it was. Do you recall his asking you that question? That is at page 316. A. What ruinous competition

1 is he referring to? Between the licensed exchanges, or between the licensed exchanges and the outsiders?

Mr. GROSVENOR: I object to the witness asking questions. He should read the testimony and decide in his own mind.

By Mr. CALDWELL:

Q. Then read again, Mr. Dyer, the few questions and answers immediately preceding the last question on page 2 316? A. Yes.

Q. Do you recall his asking any such question and your giving any such answer? A. No, sir, I do not recall Mr. Swanson specifically having asked me this question, but I do recall that I was asked by a good many exchange men whether anything could be done to eliminate the competition with the so-called independents or infringers, and I stated that the only thing that could be done was by suits on our patents. That was my constant reply to all of these inquiries.

Q. He says that he suggested to you a getting together with Kleine, and offered to act as an intermediary, and you told him to go ahead. Did you ask him to act as intermediary between the Edison Company and its licensees and Kleine? A. No, sir. Mr. Swanson is not the kind of a man that I would select as an intermediary, and I do not recall any suggestion of his that he should act as an intermediary, and I knew at that time that the interest that was primarily opposed to us at that time was not Mr. Kleine, but was the Biograph Company, and if there was going to be any getting together, it would have to be with the Biograph Company. Mr. Kleine's approaching me was not at the suggestion of Mr. Swanson, so far as I know. It was after the preliminary meeting with Mr. Marvin and Mr. Kennedy, as I have already testified.

Q. He further testifies there that he saw Kleine and told you that Kleine said he was willing to drop all trouble and work in harmony with the Edison licensees if it was possible to do so, but that they had refused to pay a royalty to the Edison Company of one-half per cent., and his associates in the Biograph Company would require a division of that royalty before they would consider any peace negotiations, and that when he reported this information back to you, you said

that terminated the matter, as the Edison Company would not agree to give any division of the royalties, as "the old man needed the money," as he puts it. Did you make any such statement to Mr. Swanson? A. No, sir, I have no recollection whatever of having discussed with Mr. Swanson the question of the possible settlement of the difficulties between the Edison Company and the Biograph Company, and I have no recollection of the conversations to which you refer. My present recollection is that Mr. Kleine came to me of his own initiative and asked me to meet him at the Republican Club, in the Summer of 1908. 1

Q. Mr. Dyer, will you turn to pages 966 and 967 of the record, and read that portion of the testimony of the witness Stryckmans, which you find there. A. (witness reading): Yes, sir, I have read this. 2

Q. Mr. Stryckmans says that Kleine told him that you told Kleine that the reason why Kleine was restricted to the Urban Eclipse and Gaumont films was that Gaumont had an independent and non-fringing camera, and that they wished to bring the Gaumont Company into the combination in order that these valuable patents would not fall into the hands of the independents. Did you make any such statement as this to Kleine? A. I did not. The reason the Gaumont films were selected, as I said in my previous testimony, was that they represented the best of the output handled by Mr. Kleine. 3

Q. And Mr. Kleine wanted to continue to handle the Gaumont films for this reason? A. Yes, sir. The Gaumont patent had absolutely nothing to do with it.

Q. Now, will you return to the record, and read pages 300 and 304? A. Yes, sir.

Q. Have you read that? A. I have.

Q. Do you recall the fact that a committee representing the Film Service Association called on you at your office, No. 10 Fifth Avenue, about that time? A. Yes, sir. 4

Q. Do you recall who the members of that committee were? A. Mr. Waters, Mr. Clark, Mr. Howard, and Mr. Aitken, I remember, and possibly also Mr. Swanson.

Q. Will you state, as near as you can recollect, just what was said at that meeting by any member of the committee and by yourself? A. I am not able to remember the conversations or who did the talking. I think Mr. Marvin was present, and also Mr. Scull. My recollection is that the im-

1 portant thing that this committee wanted to have us agree to was to eliminate the fourteen-day cancellation clause, which we refused to do. The committee also brought up, as I recall, the question of the Patents Company collecting the royalties directly from the theatres, because at that time, as I recall, we had concluded to have the exchanges collect the royalties, and they objected to this. And either at that time or when the sub-committee came to my office in Orange, I agreed, after consulting with Mr. Marvin, to have the Patents Company collect the royalties directly. And we did collect the royalties directly, for some time.

2 Q. Do you know who constituted the sub-committee that called on you at Orange the following day? A. Mr. Gillig-ham was one, and Mr. Lieber the other.

Q. Did you tell Mr. Swanson or any other member of the committee that the cancellation clause of the exchange license would be enforced only in cases of violation of the terms and conditions of the license? A. I did not.

3 Q. Did you state to Mr. Swanson or any other member of the committee that the exchanges would have to collect the royalties? A. My recollection is that that was the plan that we had first in mind, to have the exchanges collect the royalty, and we agreed that the Patents Company would collect the royalties, or would try to. And my recollection is that we did.

4 Q. Did you state to Mr. Swanson, or any other member of the committee, that you, meaning the manufacturers, had the situation pretty well in hand, and had competition shut out, and those those that were fortunate enough to secure licenses would undoubtedly make more money than they ever did in their lives, that you had absolute control of the business? A. I don't recall having made that statement to any exchange man. I did think, however, that we would be able to enforce the patents and confine the business to our licensees.

Q. Did you state to Mr. Swanson, or any other member of the committee, that so long as there were no violations of the contract, that is to say, the exchange license agreement, it would remain in existence during the life of the patents held by the Motion Picture Patents Company, as long as they had to run? A. No, sir.

Q. Will you turn, Mr. Dyer, to page 784 of the record,

and read first, the last question on page 784, and the first two questions and answers on page 785? A. (witness reads): I have read this testimony. 1

Q. Mr. Fox testifies that he signed the Edison sales contract under the assurance that the provisions of Paragraph 2 as to renting only to exhibitors handling licensed films, prohibiting the sale of films under any circumstances, would never be enforced. Do you know whether any such assurance was given by the Edison Company to Mr. Fox, or his licensed exchange, or any other licensed exchange? A. I certainly never gave him any such assurance, nor was anyone authorized by the Edison Company to give him that assurance. As a matter of fact, my present recollection is that during the period of the Edison licenses, we were pretty generally successful in preventing infringements by the exhibition at our licensed theatres of infringing films. I think this particular provision was carried out, certainly by almost all of the theatres. 2

Q. Will you turn to page 1188 of the record, and read that? A. Yes, sir.

Q. Lodge there testifies that he attended some meetings of the Edison licensees, at which the formation of the General Film Company was discussed. Are you familiar with the transactions that led up to the transfer of the Melies license to the George Melies Company of Chicago, of which Lodge was Vice-President? A. Yes, I think my recollection is fairly clear on that point. 3

Q. Do you recall about the time the Edison license held by Melies was assigned to the George Melies Company? A. It was some time before December, 1908. Possibly October.

Q. Do you recall when the assignment of the license became effective—what date? A. No, sir. I don't remember that, except that it was before the formation of the Patents Company, or rather before December, 1908. 4

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M. of the same day, at the same place.

NEW YORK CITY, November 13, 1913.

1

The hearings were resumed pursuant to adjournment at 2:30 P. M., November 13, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon FRANK L. DYER resumed the stand.

Direct examination continued by Mr. Caldwell:

2

Q. I show you a copy of an agreement executed by the Edison Manufacturing Company, by Frank L. Dyer, President— A. Vice-President.

3

Q. Yes, Vice-President; by George Melies Company, executed by Gaston Melies, as President, and also by George and Gaston Melies, individually, being "Schedule C" attached to the bill of complaint in the case of the George Melies Company, complainant, against Motion Picture Patents Company, and Edison Manufacturing Company, defendants, and George Melies and Gaston Melies, intervenors, in the Circuit Court of the United States, District of New Jersey, this agreement being found on page 31 of the transcript of the record in that case in the United States Circuit Court of Appeals for the Third Circuit, and ask you to look at the date of that agreement, and see if it refreshes your memory as to the exact time when George Melies Company became a licensee of the Edison Manufacturing Company? A. On November 2, 1908.

Q. Does that refresh your memory? A. Yes, sir.

Q. Then you are prepared to state that the George Melies Company became a licensee on November 2d, 1908? A. Yes, sir.

4

Q. Did Mr. Lodge attend any meeting whatever of the so-called Edison licensees between November 2nd, 1908, and December 18th, 1908, at which the Motion Picture Patents Company's licenses were executed? A. He did not. I remember very well that when he was present at the meeting of December 18th, 1908, I had to introduce him to the other gentlemen present.

Q. Did you hear any discussion at that meeting on December 18th, 1908, of the proposition to organize a film rental company to be maintained and conducted by the licensed manufacturers and importers? A. I did not. That meeting was occupied altogether in considering the license agreements.

Q. Did Mr. Lodge attend any subsequent meeting of the

licensed producers and importers of the Motion Picture Patents Company? A. Yes, sir. He was present at a meeting, I think, in January of 1909, where several of the licensees were present, and at that meeting we discussed the possibilities of adjusting the difficulties between the Carter-Lodge interests on the one side, and the Melies interests on the other, and that particular meeting was confined entirely to the discussion of this particular question. 1

Q. On that occasion was there any discussion whatever between you and Lodge, or between Lodge and anyone else in your hearing, relative to the possibility of the formation of an exchange to be conducted or controlled by the licensed producers or importers? A. There was not. This question was not discussed, or, at least, I knew of no discussions until a long time afterwards, and shortly before the General Film Company was formed. 2

Q. I show you Petitioner's Exhibit No. 24, at page 75 of the record, the same being Exchange Bulletin No. 18, dated December 4, 1909, signed by the Motion Picture Patents Company, and ask you to look at that exhibit, and see if you recall the circumstances which gave rise to the issuance of that bulletin? A. Yes, sir, I wrote this bulletin myself. 3

Q. And what were the occasions that gave rise to your writing it? A. The fact that we had received complaints at the office of the Patents Company from exchanges that they had been led to believe that unless they acquired films of certain licensed producers, those licensed producers would start up exchanges in competition with them, and I think that at the same time we considered complaints that had been brought to the attention of the Patents Company from theatres that if they did not use the service of certain exchanges, competing theatres would be started in opposition to them. The first complaint I remember very well, but whether the second complaint was acute at that time and required notice in this particular bulletin, I am not able to state, but that was the rumor that had been frequently brought in to us, and it was felt important that both of these rumors should be effectively stopped. 4

Q. At the time you wrote that bulletin originally was there any thought in your mind that the licensed producers and importers would ever organize exchanges of their own? A. Absolutely none. I am able to state without qualification that the suggestion of the General Film Company, or any

1 similar organization, had not been made to me, and was not known to me at that date, that is, December 4, 1909.

Q. It is alleged in Subdivision 3 of the petition that the defendants in this case determined to destroy competition between them, to monopolize commerce relating to the motion picture art, to exclude all others, and thereafter to carry on said commerce according to the terms of the unlawful combination which they were to create. Did you either individually, or any of the defendant corporations with which you were connected at that time as an officer, or any officer of any corporation with which you were connected, or to
2 your knowledge any of the other defendants, ever determine or intend or purpose to do any such thing? A. No, sir.

Q. The petition further charges that the defendants were to organize the Motion Picture Patents Company for this purpose. By whom was the Motion Picture Patents Company organized? A. By the Edison and Biograph companies.

Q. And was it for any such purpose as that alleged in the petition? A. It was not.

Q. It is alleged in the same subdivision of the petition that the Motion Picture Patents Company was to acquire all
3 patents owned by the defendants, and all other patents relating to the motion picture art. Was there any such purpose or intention on the part of the organizers of the Motion Picture Patents Company? A. No, sir. We sought only to acquire the patents that were being infringed and that resulted in patent suits.

Q. It is further alleged in the same subdivision of the petition, page 10, that the intent of the defendants in forming the Motion Picture Patents Company, and in entering into the license agreements, was to control, restrain and monopolize all branches of commerce among the States of
4 the United States and with foreign nations, relating to the motion picture art, and to exclude others therefrom. Did you, either individually, or any of the companies represented by you, or to your knowledge, any of the other defendants, have any such intention or purpose in the organization of the Patents Company, or in entering into the license agreement? A. We did not.

Q. Mr. Dyer, at the time you reached an agreement with the Biograph interests, as to which you have already testified, and prior to the formation of the Patents Company, did you take into consideration the matter of the issuance of cross-

licenses by which each patent owner might license the other interests under his patents? A. We considered and discussed that possibility. 1

Q. You have already stated that it was attended with difficulties, have you not?

Mr. GROSVENOR: What was? I object to that.

Mr. CALDWELL: That any system of cross licensing was attended with difficulties?

The Witness: We did not see how the matter could be worked out feasibly by a system of cross licenses. 2

By Mr. CALDWELL:

Q. State what difficulties you found of cross licensing?

Mr. GROSVENOR: Objected to as wholly immaterial; further, on the ground that the business difficulties which defendants may have encountered in an effort to arrive at a legitimate and legal cross licensing arrangement forms no excuse for not entering into such an arrangement, or for forming an arrangement and combination that violated the law, and therefore the question as to why they didn't do something else is immaterial. 3

Mr. CALDWELL: The Government, in its petition, makes very material the organization of the Patents Company, and alleges that it was formed for an unlawful purpose. The motives of these defendants in organizing that company are therefore material to the issues raised by the Government in its own petition.

Mr. GROSVENOR: But you are asking him here about why he didn't do something else. That is the ground of my objection. 4

Mr. CALDWELL: For the simple reason that you have contended that the same result could have been accomplished by a system of cross licenses, and that has been your contention.

Mr. GROSVENOR: This is the first time that cross licenses have ever been mentioned, to my recollection, in this record.

1 The Witness: At the time we discussed these matters with the Biograph Company the situation was this: The Edison Manufacturing Company owned patents on the only known form of camera, or, at least, the camera that was universally used at that time, and also a patent on the motion picture film which we asserted and believed covered every motion picture film made in or imported into this country. These were the primary dominating patents.

2 Mr. GROSVENOR: I object to these conclusions of the witness as being improper, not called for, and not in response to the questions addressed to him, and certainly an attempt to put into the record in an improper way what is not so, this so-called dominant patent on the film having been at that time held invalid, and no suits having been brought thereon for five or six years prior to the formation of the Edison License Association, as testified to by Marvin, one of the defendants in this suit.

3 Mr. CALDWELL: I protest against counsel for the petitioner interposing his argument upon the record, and testifying. He is entitled to make his objection and state it on the record. If the objection is good, the Court will probably sustain it. If it is bad, the Court will disregard it. Now, you may proceed, Mr. Dyer.

 Mr. GROSVENOR: I want to make my objection on the record to this improper way of conducting this equity proceeding by getting this witness to give a lecture, instead of conducting it by proper questions and answers, as counsel knows is the right way to do it.

4 The Witness: The Biograph Company owned the Pross and Latham patents, which covered important and necessary details in the construction of the projecting machines. The Armat Company owned the Armat-Jenkins patent, which covered the shutters used in all projecting machines at that time, and was therefore of vital importance to the legitimate practice of the art. There were, therefore, three separate and distinct licensors. Aside from these licensors there were the following groups of licensees and infringers:

 In the first place, there were the Edison licensees, who

were licensed under the Edison patents, but those licensees were not licensed under the Biograph and Armat patents, and therefore the sale of film by them for use on infringing projecting machines in the United States would have been a contributory infringement. 1

Mr. GROSVENOR: All my objections I made above apply to all this line of testimony and examination.

Mr. CALDWELL: I will agree that at the termination of Mr. Dyer's answer to this question you can put any objection that you want to make on the record, if you will only refrain from interrupting him during the course of his answer. 2

Mr. GROSVENOR: And I further object to the last answer for the reason that the statement is that such and such would have been unlawful if they had done such and such, which is manifestly improper testimony; it is not testimony to any fact. If you want to change that to a statement of fact, I will withdraw the last part of my objection.

The Witness: Therefore, to have licensed this group of infringers would have necessitated a license from the Armat and Biograph Companies under the Latham and Pross, and Jenkins-Armat patents. 3

The second group was the so-called Edison licensed exchanges, who were licensed to handle films under the Edison patents, but had not been licensed to handle films under the Biograph and Armat patents. These exchanges, in handling films for use on infringing projecting machines, would also be contributory infringers on the Latham, Pross, and Jenkins-Armat patents, and therefore these exchanges would similarly have had to be licensed by the Biograph Company under the Latham and Pross patents, and by the Armat Company under the Armat-Jenkins patent. 4

The third group were the so-called licensed theatres, which were licensed under the Edison patents, but which in showing film on infringing projecting machines, were infringing the patents of the Biograph and Armat companies, and, therefore, these theatres, in order to be free from infringement, would similarly have had to be licensed by the Biograph Company under the Latham and Pross

- 1 patents, and by the Armat Company under the Armat-Jenkins patent.

The fourth group were the manufacturers of projecting machines, who were selling such machines in infringement of the patents of the Biograph and Armat companies, and these concerns also would have had to be licensed by the Biograph Company under the Latham and Pross patents, and by the Armat Company under the Armat-Jenkins patent, and possibly, also, by the Edison Company under the Edison film patent.

- 2 The fifth group was the Biograph Company, and its licensees, producers and importers of infringing films. While the constituents of this group would be licensed under the Latham and Pross patents, they would then, in carrying on their operations, infringe the Edison patents, and, therefore, would have had to be licensed by the Edison Company under the Edison patents, and in supplying film for use on infringing projecting machines, they would have had to be licensed by the Armat Company under that patent.

- 3 The sixth group were the exchanges handling the film of the Biograph Company, and its associates, which group, although licensed under the Latham and Pross patents, would be directly infringing the Edison film patent, and would, therefore, have had to be licensed by the Edison Company under that patent, and in disposing of film to theatres for use on projecting machines infringing the patent of the Armat Company, and would have had to be licensed by the Armat Company under the Armat-Jenkins patent.

- 4 And finally, the seventh group, including the so-called independent theatres, who were receiving film of the Biograph Company and its associates, and the constituents of this group, although licensed under the Latham and Pross patents, would directly infringe the Edison film patent, so that they would also have had to be licensed by the Edison Company under the film patent, and they would also directly infringe the Armat-Jenkins patent, and so they would have had to be licensed by the Armat Company, under that patent.

Now, in discussing this question, we realized that the granting of these licenses would necessarily involve many

thousand separate licenses from the various groups of licensors to the various groups of infringing manufacturers, exchanges, and theatres, so that the difficulty of providing such licenses was very great, and the difficulty in enforcing such a very complicated system of licensing would be extremely difficult; but the insuperable difficulty which confronted us was the fact that if the three licensors acted independently, and without co-operation, that it would be impossible to get any order out of the chaos which the situation presented. Each licensor considered its patents as valuable, if not more so, than the other licensor, and each wanted to get just as much in the way of royalties as could be gotten. We felt that to leave these three licensors to independently negotiate licenses with these conflicting infringing groups would be an impossibility, and that there would have to be some understanding and co-operation among the three licensors, by which there could be a fair division of the royalties. Unless there was some co-operation, as I have stated, it seemed to us, and I still feel, that the solution would have been absolutely impossible. If there could be co-operation among the three groups of licensors on the subject of collecting and dividing the royalties, we felt that that co-operation could be best secured by means of a company that would act as a single licensor, that would provide for the granting of all the licenses required, that would provide for the collection of all the royalties, and that would provide for the division of these royalties among the three licensors in the proportions they had agreed upon, was fair and equitable under all the circumstances of the case. While, therefore, the system of cross licensing as discussed by us, might have been theoretically possible, it seemed to us to involve practically a reasonable impossibility, and, therefore, the suggestion of a single licensor to take the patents seemed to us to be an acceptable and reasonable solution of our difficulties.

By Mr. CALDWELL:

Q. The petition, in Paragraph 5, alleges that with the same unlawful purpose, each of the ten manufacturers theretofore referred to, entered into the license agreement with the Patents Company on December 18, 1908. Did you, or any of the companies represented by you, or any of the

1 other defendants, to your knowledge, have any such purpose or purposes as those alleged in the petition, in entering into this license agreement? A. No, sir, we did not.

Q. The same allegation of unlawful purpose and intent is contained in Subdivision 8 with respect to the execution of license agreements, with the manufacturers of exhibiting machines. Were these agreements, or any of them, made with the intent or purpose alleged in the petition, or as means to monopolize the trade? A. No, sir.

2 Q. In Subdivision 9, on page 27, the petition alleges that the defendants set out to monopolize the business at all the rental agencies, or exchanges, in the United States, their purpose being to drive out of business all persons so engaged, and to absorb to themselves the profits theretofore made therein, and that this unlawful end they accomplished by means of the General Film Company. Are these allegations of the petition true? A. No.

Q. Was the General Film Company organized for any such purpose? A. It was not.

3 Q. In Subdivision 11, page 34, of the petition, it is alleged that with the same unlawful purpose, each of the ten Patents Company licensees executed an agreement with the General Film Company, to supply the latter with film. Were these agreements executed for the purpose alleged in the petition? A. No, sir.

Thereupon JOHN HARDIN, a witness called on behalf of the defendant, being first duly sworn by the examiner, testified as follows:

4 Direct examination by Mr. KINGSLEY:

Q. What is your business, Mr. Hardin? A. I am connected with Thomas A. Edison, Incorporated.

Q. How long have you been connected with Thomas A. Edison, Incorporated? A. About eight years and a half.

Q. Were you at one time employed by Montgomery, Ward & Company, of Chicago? A. Yes, sir.

Q. In what years were you employed by Montgomery, Ward & Company? A. From 1898 to 1902. Sometime in 1902.

Q. While you were with Montgomery, Ward & Company, what was your work? A. I was assistant manager of the optical department of the store. 1

Q. In connection with your duties as assistant manager of the optical department of Montgomery, Ward & Company, did you handle projecting machines? A. Yes, sir.

Q. During the four years from 1898 to 1902, did you handle Edison projecting machines? A. Yes, sir.

Q. What types of Edison projecting machines did you handle while you were with Montgomery, Ward & Company? A. The type known as the Exhibition Model, at that time.

Q. Was that the only model that you handled while you were with them? A. A little later, we got the Universal Model. I believe the first machine we handled was the Exhibition Model. 2

Q. When did you become connected with Thomas A. Edison, Incorporated, after leaving Montgomery, Ward & Company? A. In May, 1905.

Q. Where were you located when you first became connected with Thomas A. Edison & Company? A. In Chicago. I had charge of their Chicago distributing office.

Q. What were your duties as manager of that office? A. Well, the sale of the machines and films and looking after the business generally. 3

Q. Did you handle projecting machines during the years that you were in charge of the Edison office in Chicago? A. Yes.

Q. What was the name of the Edison Company at the time when you became connected with it? A. That was the Edison Manufacturing Company.

Q. Subsequently the name was changed to Thomas A. Edison, Incorporated? A. Thomas A. Edison, Incorporated. 4

Q. Did you afterwards come East? A. Yes, I was transferred to the Orange office in August, 1911.

Q. And how long were you with the Orange office? A. I was at the Orange office until some time in the Fall of 1912, and then they transferred me over to the studio, up in the Bronx, here in the city.

Q. During the time that you were connected with the Edison office in Chicago, and during the time that you

1 were connected with the Edison office in Orange, did you handle projecting machines? A. Yes, sir.

Q. Are you familiar with the types of projecting machines which Montgomery, Ward & Company handled, coming from the Edison Manufacturing Company in 1898 up to 1902, and with the types of projecting machines which were sold by the Edison people during the years you were in their employ? A. Yes, sir.

2 Q. Are you familiar with the catalogues put out by Thomas A. Edison, Incorporated, or the Edison Manufacturing Company, from time to time, during the years regarding which you have testified? A. Yes, sir.

Q. I show you a catalogue endorsed "Form 300, March 15th, 1906," and ask you if you recognize it? A. Yes, sir.

Q. By whom was that catalogue issued? A. Edison Manufacturing Company.

Q. When was it issued? A. That is Form 300, which was in 1906, I believe. This print is fine. I take it that the ink mark endorsed on it is the same as the fine print, which I cannot see in this light. If it is correct, it is a 1906 catalogue.

3 Q. Have you, previous to testifying, compared the endorsement on the first page of the catalogue I have just shown you, with the fine print noted on the inside page? A. Yes, sir.

Q. And was it issued March 5th, 1906? A. Yes, sir.

Q. Will you look at this catalogue and see if it refreshes your memory as to the types of projecting machines which the Edison Company was supplying in the market in the year 1906? A. Yes, sir, that is the same machine we were selling at that time.

4 Q. Is there more than one machine set out in that catalogue? A. Yes, there is the Exhibition Model and the Universal Model.

Q. What is the Universal Model? A. That is a smaller machine than the Exhibition Model, and a cheaper machine. It sold for \$75, while the Exhibition Model was a one hundred and fifteen dollar machine.

Q. Are those the list prices of those two machines? A. Yes, sir.

Q. And were they both in the market at the same time? A. Yes, sir.

Q. Furnished by the same manufacturer? A. Yes, sir. 1

Q. Wherein did these two machines differ from each other? A. Well, the one was considerably lighter than the other, smaller. The Exhibition machine was large and heavy as compared with the other, and was used mostly in theatres where it was more or less of a permanent installation, while the Universal model was designed and put on the market to meet the demands of the requirements of many traveling exhibitors who went from one place to another giving small shows, and who wanted a light and portable machine that they could carry with them. Some of the traveling exhibitors carried the heavier machines, but a good many of them wanted the light machines, not alone for the greater ease in transporting it, but for the cheaper price. 2

Q. What was the difference in weight? Can you tell from recollection? A. Something like probably 50 or 75 pounds. I don't know. I think the weight is set down in here.

Q. What was the weight of the Universal Model? A. The Universal Model, net weight complete, 56 pounds without rheostat. That is without packing.

Q. What was the weight of the Exhibition Model? A. That is also set down. 3

MR. GROSVENOR: I object to this as going into the most trivial matters. What the weights of these machines were certainly has no bearing on the issues in this case.

The Witness: 70 pounds.

By Mr. KINGSLEY:

Q. Will you look at the second page of this catalogue and at the bottom of the page see if there is any precautionary statement made there by the manufacturer? A. Yes, sir. A paragraph here headed "Caution." 4

Q. Will you read that? A. (reading): "Edison Kinetoscopes, projecting Kinetoscopes and films are covered by United States patents No. 493,246, March 14, 1893; No. 589,168, August 31, 1897 (reissued September 30, 1902); No. 12,037 and 12,038 and January 12, 1904, No. 12,192); No. 688,648 and No. 688,649, December 10, 1901, and No. 714,845,

- 1 December 2nd, 1902. The public is warned against purchasing or exhibiting infringing apparatus."

Q. I show you a catalogue endorsed "Form 320, February 1st, 1907," and ask you if you recognize that? A. Yes, sir.

Q. By what firm or corporation was that put out? A. Edison Manufacturing Company.

Q. Will you look at the bottom of the second page and state what you find there? A. There is a paragraph under the word "Caution."

- 2 Q. Is that a paragraph containing the same warning as was on the second page of the preceding catalogue? A. Yes, sir.

Q. Will you look at this catalogue and see if it refreshes your memory as to the projecting machines that were put out at that time? A. Yes, sir.

Q. What projecting machines are shown there? A. It is the Exhibition Model with improved take-up and film magazines.

- 3 Q. What was the price of the Exhibition Model at the time this catalogue was issued? A. One hundred and thirty-five dollars.

Q. Is there any difference between the Exhibition Model shown in this catalogue and the one shown in the preceding catalogue? A. Yes, sir.

Q. What is the difference? A. This one is equipped with upper and lower film magazines, while the other had no magazines.

Q. What is the difference in price? A. Ten dollars each. Twenty dollars on the total machine.

Q. Is the Universal Model contained in this catalogue? A. Yes, sir. It is the same as in the previous catalogue.

- 4 Q. The same price and the same machine? A. Seventy-five dollars. The same machine.

Q. Do you know whether the two catalogues which I have just shown you were generally circulated through the trade? A. Yes, sir.

Q. I show you a catalogue endorsed "Form 335, February 15, 1908," and ask you if you recognize that? A. Yes, sir.

Q. By what firm or corporation was that catalogue put out? A. Edison Manufacturing Company.

Q. What projecting machines are advertised in that catalogue? A. There, on pages 8 and 9, is the Edison Projecting Kinetoscope, Underwriters' Model. 1

Q. And what is on page 9? A. Eight has the illustration and 9 has the description. The same machine on both pages.

Q. What other machine is there there? A. On pages 10 and 11 is the Improved Exhibition Model.

Q. Will you describe these two machines and state wherein they differ from the Exhibition Model which you have just referred to, and which was set out in the catalogue of February 1st, 1907, beginning with the Edison Projecting Kinetoscope, Improved Exhibition Model? A. 2
The first machine we described was \$115, the next one was \$135, which had film magazines added to it, making the difference in price, and this next one has the upper and lower magazines, and a film gate, automatic film gate, and a different rheostat from the other machine. Listing at \$155.

Q. By "film gate," do you mean a fire shutter? A. What we call a fire shutter. A fire shutter to cut off the light from the film, automatically, when the machine stops.

Q. That is something new, or was at that time? A. It 3
was new on that. It was not in the previous model machine.

Q. And what is the difference in price between the Exhibition Model and the one in the catalogue of February 1st, 1907? A. The February 1st, 1907, was \$135, and this one was \$155.

Q. You spoke of an Underwriters' Model set out in this catalogue. A. That is the machine on pages 8 and 9 in this catalogue, which was listed at \$175.

Q. How does that differ from the Exhibition Model which you have just described? A. It has the upper and 4
lower magazines, the automatic fire shutter, a different rheostat, and has the covered knife switch and adjustable legs and flanges for the machine to stand on, which the other did not have.

Q. In other words, it is a new model of projecting machine? A. It is an improvement on the other model. Improvements added to it.

Q. Is the Universal Model set out in that catalogue? A. Yes, sir.

1 Q. What did you say the date of that catalogue is? A. This is February 15th, 1908.

Q. And what was the price of the Universal Model, February 15th, 1908? A. Seventy-five dollars.

Q. Is that the same price at which it had been sold during preceding years? A. Yes, sir.

Q. I show you a catalogue entitled "Edison Kinetoscopes" and endorsed "Form 410, December 1st, 1908." Do you recognize it?

2 Mr. GROSVENOR: I want these books marked for identification, please, and kept by the Examiner, so that I can use them in the examination of other witnesses.

A. Yes, I recognize it.

By Mr. KINGSLEY:

Q. What types of projecting machines are set out in that catalogue? A. On pages 8 and 9, the Underwriters' Model, Type B.

3 Q. How does that differ from the Underwriters' Model that was described in the catalogue of February 15th, 1908? A. This is all metal mechanism, whereas the other was a wood cabinet; it has a lower magazine and take-up underneath the stand, whereas the other one had it in front of the stand. It has a different lamp house, heavier constructed, heavier material, and heavier and different arc lamp, and a different rheostat. Also has five adjustable legs, where the other had four, and is a different machine altogether. Has a different type of fire shutter. This fire shutter acts with a centrifugal movement, where the other was a friction. It is a different type altogether.

4 Q. What was the price of the machine you have just described? A. Two hundred twenty-five dollars.

Q. What other projecting machine is advertised in the catalogue I have just shown you? A. There is the Exhibition Model, one-pin movement, \$155. That is the same machine as was advertised in the previous catalogue.

Q. This is the same machine that was advertised in the catalogue of February 15th, 1908? A. At \$155, yes.

Q. And the price was the same? A. The price was the same. 1

Q. What other machine is set out in the catalogue? A. On pages 28 and 29 there is the Universal Model machine.

Q. What is the price of that machine? A. Ninety dollars.

Q. Is that the same type of Universal machine that has been set out in the other catalogues, in the preceding catalogues? A. With improvements, yes.

Q. What are the improvements? A. This is the same machine that was previously sold at \$75. It has the addition of a different rheostat. This rheostat listed at \$25, whereas the other listed at \$10. This is the same rheostat which was furnished with the Exhibition Model machine at \$135, and the difference in the price of the rheostat was \$15, and we added \$15 to the price of the machine. 2

Q. And what was the price December 1st, 1908? A. Ninety dollars.

Q. I show you a catalogue entitled "Edison Kinetoscopes," endorsed "Form 470, January 1st, 1910." Do you recognize it? A. Yes, sir.

Q. By what firm or corporation was it put out? A. Edison Manufacturing Company or Thomas A. Edison. Thomas A. Edison, Incorporated. I don't remember just exactly if it was the Edison Manufacturing Company or Thomas A. Edison, Incorporated. 3

Q. What types of projecting machines are advertised in this catalogue? A. The Underwriters' Model, Type B, the same as in the previous catalogue we just got through with.

Q. The same as in the catalogue of December 1st, 1908? A. Yes, sir.

Q. Same price? A. Yes, sir.

Q. The same machine? A. Yes, sir. 4

Q. What other projecting machine is advertised in this catalogue? A. The Exhibition Model, \$155, the same as was in the previous catalogue.

Q. Is this the same machine that was advertised in the catalogue of December 1st, 1908? A. Yes, sir.

Q. Is the price the same? A. Yes, sir.

Q. I show you a catalogue entitled "Edison Kinetoscopes," endorsed "Form 500, August 1st, 1911." Do you recognize it? A. Yes, sir.

1 Q. By what firm or corporation was that catalogue put out? A. That was by Thomas A. Edison, Incorporated.

Q. What projecting machines are advertised in that catalogue? A. On page 415 we have the Underwriters' Model, Type B, \$225, the same machine which was listed in the previous catalogue.

Q. Is this the same machine which was listed in the catalogue of January 1st, 1910? A. Yes, sir.

Q. Is the price the same? A. Yes, sir.

2 Q. What other machine is advertised in the catalogue I have just handed you? A. The Exhibition Model at \$155.

Q. Is this the same machine which was set out in the catalogue of January 1st, 1910? A. Yes, sir.

Q. Is the price the same? A. Yes, sir. That is the list price on the machine with the same equipment. Different equipments add—

Q. The same machine may be had with different equipments at different prices, may it not? A. Oh, yes.

Q. What was the price of the Improved Exhibition Model, one-pin movement, February 15th, 1908? A. One hundred and fifty-five dollars.

3 Q. And was the price changed with respect to the machines described in the catalogue of February 15th, 1908, down to and including August 1st, 1911? A. No, sir.

Q. That is to say, the same machine, the Edison Projecting Kinetoscope, Improved Exhibition Model, sold for \$155 from February 15th, 1908, down to and including August 1st, 1911? A. Yes, sir. And does today, as a matter of fact.

Q. What is a rheostat? A. A rheostat is a resistance in getting the light out of the arc lamp to project your pictures.

Q. You have spoken of the different rheostats being used with different models or the same model at different times.

4 A. Yes, sir.

Q. Wherein did this difference exist? A. Some rheostats are very much better and very much heavier, and are better to take what is known as a longer grind. If you use a machine in a theatre for a good many hours a day probably, naturally you have got to have a better form of rheostat than if you use the machine with a traveling exhibition that gives only one or two performances a night. The original rheostat we put out was sold by itself for \$10. Since that time we have got rheostats selling as high as \$40 and \$50.

Q. Do these rheostats ever burn out? A. Yes, sir. 1

Q. Would a small, cheap rheostat be more apt to burn out than a heavy, more expensive one, such as you have described? A. Yes, sir.

Q. Do you know whether or not fire regulations, regulations of boards of fire underwriters, and city ordinances, had anything to do with the changes made in projecting machines from time to time? A. Yes, sir, they had a great deal to do with it.

Q. And did the manufacturers endeavor to conform to the new regulations and rules made by various municipalities, boards of aldermen and fire underwriters? A. Yes, sir. 2

Q. So that many of the changes made in the projecting machines were based upon positive regulations made by various municipalities or communities? A. Oh, yes. For instance, the film magazines were required by municipalities, and also the fire shutter was required. The film had to be enclosed in an iron box, so that it could not burn. That is the fire magazine. Then the automatic fire shutters were required by ordinances.

Q. Neither of these devices were attached to the Universal Model that sold for \$75 and \$90? A. No, sir. They were never attached to the Universal. 3

Mr. GROSVENOR: These are improvements which you made in the machines because you were ordered to do so by the various local authorities?

The Witness: Some of the improvements we were required to put on the machines or else we could not sell them. Other improvements we made ourselves to meet the demand for a better machine, which would give a better exhibition and wear longer. 4

By Mr. KINGSLEY:

Q. When was the Universal Model discontinued? A. I cannot say exactly. Sometime about 1910, I think.

Mr. GROSVENOR: I object to that last question as being remote and immaterial.

1 By Mr. KINGSLEY:

Q. Had you found that the sales of the Universal Model had been falling off? A. Yes, sir.

Q. What have you to say with respect to the traveling exhibitor who had formerly used the Universal Model? A. Well, there were practically no traveling exhibitors left to buy it. The evolution of the business in the way of picture theatres established all over the country has gradually taken the traveling exhibitor's business away from him. Formerly he could go into a little town and give an exhibition of a
2 night or a week, whereas now he cannot find a town that has not got from one to half a dozen theatres in it, so there is no room for him.

Q. So that with the disappearance of the traveling exhibitor, the demand for the Universal Model disappeared also? A. Yes, sir.

Q. What was your experience of people coming in to buy projecting machines as to their desire to get a good machine and the discretion they used in selecting them? A. Well, there was a constant demand for the best wearing machine they could get, the machine that would stand the wear and
3 tear of a long show. To meet that demand, we constantly improved the machines with heavier gears and bearings, hardened steel bearings. We improved the machine as much as we could in order to stand up under the long grind.

Q. And did you find that the new models, even though they were listed at a higher price, always had a ready sale? A. Always.

Q. And even after you had the better models, did you keep the old models in your stock rooms for sale? A. We kept the old models, some of them, always for sale. There was more or less demand for them.

4 Q. Do you recall when the \$225 machine was offered to the trade? A. Yes, sir.

Q. Did it find a ready sale? A. Yes, sir.

Q. In spite of the additional price? A. Yes, sir.

Q. How were the sales in proportion to the sale of the \$155 machine which you have described, generally? A. Well, there was more demand for the \$225 machine when it came out than there was for the other. They naturally wanted the best machine.

Q. I show you Petitioner's Exhibit 95, which appears

at page 384 of the record, and purports to give the prices of Edison projecting machines in 1907, 1908, 1909, 1910, 1911 and 1912. Are the prices therein set out, a correct statement of all the prices of Edison projecting machines on sale during those years? A. No, sir. 1

Q. In what respect are they deficient? A. In 1907, this states a list price of \$125, and in 1907, a list price of \$150. As a matter of fact, we never listed a machine at those two prices at any time. In 1909, they gave the price \$175, that is correct; 1910, \$225 is correct; 1911 and 1912, \$225—that is correct.

Q. But do these prices that are set out in Petitioner's Exhibit 95 refer to the same machine during the years listed there? A. I don't know what machine he had in mind when he gave those prices. We had no hundred and twenty-five dollar machine and no one hundred and fifty dollar machine, so I cannot tell what he refers to. 2

Q. You say that in 1912 the price of \$225 is correct. A. Yes, sir.

Q. In 1912 was there any other projecting machine at a smaller price, for sale by the Edison Company? A. Yes, sir.

Q. What was that price? A. The Exhibition machine at \$155. 3

Q. You say that the price of \$225 set out in 1911 is correct? A. That is correct for the Type B model which we listed at \$225 at that time.

Q. But was there another machine at another price? A. Yes.

Q. What was that? A. \$155.

Q. And that was the Exhibition Model? A. Yes, sir.

Q. Would the same answer apply to 1910? A. Yes, sir. We had a machine, the one hundred and seventy-five dollar model, which I described a while ago, the Underwriters' Model, which came out before the Type B model. That was \$175 in that year. 4

Q. In 1910? A. In 1909 and up to 1910.

Q. Can you say whether the one hundred and twenty-five dollar machine set out in this exhibit as of the year 1907, is the same machine set out in this exhibit at \$225 as of the year 1912? A. It could not be.

1 The various catalogues identified by the witness are marked respectively Petitioner's Exhibit for Identification 236, Petitioner's Exhibit for Identification 237, Petitioner's Exhibit for Identification 238, Petitioner's Exhibit for Identification 239, Petitioner's Exhibit for Identification 240, and Petitioner's Exhibit for Identification 241.

2 Mr. KINGSLEY: It is conceded that Petitioner's Exhibit 237 for Identification is an exact duplicate of the catalogue of Edison Projecting Kinetoscopes brought to court by the witness Swaab on the occasion when he gave his testimony, and that said catalogue contains the same matter that is in Petitioner's Exhibit 237 for Identification, which is Form 320, dated February 1st, 1907.

Cross examination by Mr. Grosvenor:

Q. Look at the first catalogue which you produced, and state the date of it. A. Form 300, March 15th, 1906.

Q. Is this the earliest issued of the various catalogues which you produced? A. Yes, sir.

3 Q. Is it similar in form to other catalogues issued earlier than that date? A. Yes, sir.

Q. Now look at pages 8 and 9, please, and read the two paragraphs on those pages? A. I have read it.

Q. Substantially the same language appears in each of the other catalogues you produced? A. The same description of the same machine, yes, sir.

Q. And did these sentences, or practically the same sentences, occur in the earlier catalogues of the Edison machine? A. Yes, substantially the same description.

4 Mr. GROSVENOR: I ask that the sentences marked be copied from the catalogue dated March 15th, 1906, beginning with the paragraph headed "The Mechanism," page 8, and running through that paragraph ending at the top of page 9.

The same is as follows:

"THE MECHANISM

1

"Edison Projecting Kinetoscope Mechanisms are equipped with triple sprocket gearing. The top sprocket feeds the film from the upper reel through a loop into the framing device. The middle sprocket has an intermittent motion which brings the film to the point of exposure and stops it for the fraction of a second required to project the picture upon the screen. The lower sprocket maintains the lower loop and feeds the film into the take-up attachment.

2

"The loop formed in the film between the top and middle sprockets eliminates the pull and friction on the film, and greatly prolongs the life of the film. In other words, only about five or six inches of film is brought down by the middle or intermittent sprocket, the top sprocket, which runs continuously, doing all the work of feeding the film into the framing device."

Redirect examination by Mr. KINGSLEY:

Q. The same description applied to the same machine in the various catalogues? A. Yes, sir. 3

Recross examination by Mr. GROSVENOR:

Q. These words, you understand, these sentences which you have read, appear in substantially the same form in the earlier catalogues and in subsequent catalogues? A. I cannot say about the earlier catalogue; not having it before me, I cannot remember about that. The description is substantially the same in the different catalogues as they came out. It might be a little different in wording. I cannot say if there was any change or not. 4

Q. But there was the same reference to loops and the form of mechanism in the other catalogues?

Mr. KINGSLEY: I object to that unless the catalogues are produced.

A. I don't know in the other catalogues what the wording was.

1 Q. Is your office in this town? A. My office is up in the Bronx, yes, sir.

 Q. Will you look and see if you have any earlier catalogues? A. I know without looking. I have not any catalogues at all up there, because I am not in the machine department. I have not any catalogues there.

 Whereupon, at 4:10 P. M., of this Thursday, the 13th day of November, 1913, the hearings are adjourned until Friday, November 14th, 1913, at 10:30 A. M., at the Hotel Manhattan, New York City.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	No. 889. Sept. Sess., 1912.	2
v.		
MOTION PICTURE PATENTS Co. and others, Defendants.		

NEW YORK CITY, November 14, 1913.

The hearings were resumed pursuant to adjournment at 10:30 A. M., November 14, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

1 Thereupon, FRANK L. DYER resumed the stand.

Cross examination by Mr. GROSVENOR:

Q. Mr. Dyer, you have stated on direct examination that you were general counsel for Mr. Edison from April, 1903, to July, 1908; is that correct? A. Yes, sir.

Q. Are you a member of the Bar of New York State? A. No, sir. I am a member of the Bar of the District of Columbia.

Q. You are not licensed to practice law in the State of
2 New York? A. No, sir, not before the State Courts.

Q. You were general counsel for the Edison Company during this period of warfare in the early part of 1908 between the Edison Manufacturing Company and the Biograph Company? A. Yes, sir, although I became the Vice-President of the Edison Manufacturing Company in July, 1908, and thereafter devoted myself entirely to commercial matters.

Q. You testified at the beginning of your examination rather generally as to the litigation prevailing in the years prior to the formation of the Patents Company. Have you any memoranda, or have you refreshed your recollection by
3 looking up the dates as to these various suits, so as to be able to testify more specifically in regard thereto? A. No, sir, but I remember the circumstances fairly well, but not the exact dates.

Q. The first suit against the Biograph Company brought by the Edison Company on patent No. 569,168, which was the patent embracing both the camera and the film patents, was decided in the Circuit Court of Appeals of the Second Circuit against the Edison Company in March, 1902, was it not? A. I think it was about that date.

Q. And subsequently you obtained, and I mean by "you"
4 the Edison Company, obtained reissues, one reissue on the camera claims, and another reissue, which was No. 12,038, and, subsequently, No. 12,192, on the film claim? A. Yes, sir.

Q. In that first decision of Judge Wallace, in 1902, you recall that the decision was against Edison's claims on the film, is that correct? A. The decision was to the effect that the claims were too broad, and that the claims under the original patent were broader than the Edison invention.

Q. Can you point to any decision in the six years that

elapsed, or the six and a half years that elapsed, between November, 1902, and the formation of the Patents Company in December, 1908, in which the film patent was sustained? A. No, sir, I don't think there was any decision.

Q. From March, 1902, when Judge Wallace handed down that opinion in the Circuit Court of Appeals, in this Circuit, up to February, 1908, had you brought any suit on your film patent reissue, or on your film claims, against the Biograph Company? A. Yes, sir, we had.

Q. What was the date of such a suit? A. My impression is that two suits were simultaneously brought against the Biograph Company, one on the camera reissue No. 12,037, and the other on the film reissue No. 12,038, and that it was because of the knowledge that the Biograph Company would interpose the defense that the reissue No. 12,038 had actually broadened the scope of the claims, instead of narrowing them, that the second reissue No. 12,192 was granted.

Q. No. 12,038 was the first reissue of the film patent after the opinion of Judge Wallace? A. Yes, sir.

Q. Is it not a fact that you brought suit on that reissue No. 12,038, November, 1902, and that the suit was discontinued on January 12, 1904? A. I think that is so.

Q. And it was about that time that the reissue No. 12,038 was abandoned, and you got another reissue on the film claims, namely, No. 12,192? A. Yes, sir, I think the second film reissue was granted in 1904.

Q. Mr. Dyer, had you brought any suit against the Biograph Company on the film patent reissue No. 12,192, from the time of its issue, dated January 12, 1904, up to February, 1908, when these Edison licenses were issued? A. I was under the impression that we had brought suit against the Biograph Company on the reissue No. 12,192, some time before February, 1908, but if that is the date when the suit was brought then I know of no such other suit brought against the Biograph Company between those dates.

Q. I am not asking you as to your impressions, Mr. Dyer. Can you testify whether or not the Edison Company brought any suit against the Biograph Company before the formation of the so-called Edison License Association? A. I was of the belief that the suit against the Biograph Company had been brought earlier than you have stated, but the only suit on this patent that was brought against the

1 Q. Biograph Company was the one that was pending in the Summer of 1908, and, therefore, if that is the suit that was filed in February, 1908, then I do not know of any suits that were brought between January, 1904, and February, 1908, on that point.

 Q. You were the general counsel for the Edison Company at that time? A. Yes, sir, but these patent suits, you understand, were handled by separate patent counsel. Mr. Bull was in charge of these suits, and he knew more about them than I did.

2 Q. Can you answer, Mr. Dyer, frankly, yes or no, whether the Edison Company had or had not brought suit against the Biograph Company on reissue No. 12,192, before the Biograph Company refused to join in with the Edison licensees? A. Not any more fully than I have. I have stated that if that is the date when that suit was brought then I know of no suit. In other words, I am quite confident that two suits were not brought.

 Q. You did not, then, on your direct examination by your counsel, intend to give the impression that you were in litigation with the Biograph Company on the film patent prior to March, 1908? A. No, sir.

3 Q. Now, the Biograph Company was your principal competitor, was it not? A. In the early days they were, but later on other competitors came in, principally Pathe.

 Q. But the Biograph Company was one of your principal competitors in the year 1904, and to the year 1908? A. Yes, sir.

 Q. During that time the Biograph Company was manufacturing and selling positive motion picture films, was it not? A. Yes, sir.

4 Q. And during that period of four years you brought no suit against that company, upon that film reissue No. 12,192, did you? A. I don't think we did, no, sir.

 Q. It is a fact that you didn't bring any suit during that period of four years against the Biograph Company on reissue No. 12,192? You know that? A. Mr. Grosvenor, I am not trying to evade your question. The only doubt I have is as to the date when the film suit was brought.

 Q. Don't you know, Mr. Dyer, that you did not sue the Biograph Company on reissue No. 12,192, until after they declined to join in with the other Edison licensees?

Now, don't you know that that suit was subsequent to their refusal? A. I don't know that. I don't remember the date, but if that is the date, then it is a fact, because they had refused to accept a license by the first of February.

Q. You testified as to litigation on the Latham patent. Isn't it true, Mr. Dyer, that prior to the formation of the Patents Company, and the merging of the different patents in that holding company, you, as general counsel for the Edison Company, had scoffed at the claim made under the Latham patent? A. I had sneered at it.

Q. When was the Latham patent issued? A. I think in 1902.

Q. Do you know Mr. H. N. Marvin? A. Very well.

Q. During this period from 1904 to 1908, he had been one of the principal officers of the Biograph Company? Is that not the fact? A. Yes, sir.

Q. And isn't it a fact, that during that period, he had scoffed at your pretensions under the film patent? A. I think so. That was a customary thing in business circles, to depreciate the patents of your competitors, and glorify your own patents.

Q. The Biograph Company did not buy the Latham patent until after the formation of the Edison licensees, did it? A. I don't think they did, but I am not positive.

Q. In any event, no suit was brought against the Edison Company on the Latham patent, until after the formation of the Edison licensees? A. No, sir.

Q. And the Edison Company for many years had used the so-called loop on its projecting machines, and cameras, had it? A. We had been infringing this patent, yes, sir.

Q. I say you had been using the loop on your cameras and projecting machines, for many years? A. That was the purport of my answer, yes, sir.

Q. And no suit had been brought against you, had it? A. No, sir.

Q. Mr. Dyer, do you recall making a statement in regard to the Latham patent to the representatives of the Show World, which was subsequently published in the Show World of April 4, 1908, at page 11? It is also printed in Dyer's testimony in another suit, numbered 5-167, Vol. 2, page 170. It is Petitioner's Exhibit 173 in this case, at page 922, Vol. 2. I show you the article? A. Yes, I recall

1 this article, and remember having made the statement, or those general statements at the time.

Q. In this interview you characterized the Latham patent as a "joke" in the business, did you not? A. I did at that time, yes, sir.

Q. You say in this article also: "I have been familiar with this patent ever since its issue." Is that a true statement? A. Superficially considered, yes, sir.

2 Q. You also stated: "I at one time looked into the Latham patent in the hope that I might be able to persuade myself that it possessed value, but I could not see anything in it." Did you make statements to that same effect about that time? A. At that time I did, yes, sir.

Q. You say: "According to the people who are now affirming its validity, it has been infringed by everyone since August 26th, 1902, when it was issued." Who were the people that were affirming its validity at the time you made this statement in April, 1908? A. I think the Biograph Company were doing that.

3 Q. Who had acquired the patent about that time? A. I don't remember when they acquired the patent, but I think they acquired it shortly before that time.

Q. That is, shortly before the date of that interview? A. Yes, sir.

Q. Had the patent been infringed by everyone since its issue in 1902? A. So far as I know, it had. That is, when I say "everyone," you understand, I mean people in the moving picture business.

4 Q. You refer there in your statement, also, to trouble Latham had by reason of an interference with Thomas Armat, and you say that "The Court of Appeals of the District of Columbia decided in that interference that Armat and not Latham was the first inventor. As a result of this controversy all that Latham was able to obtain from the Patent Office was a very limited patent." Did you make that statement about that time? A. That was the cause of the error in my statement. I was under the belief that Armat was the first inventor, but subsequently found that Latham antedated Armat.

Q. And you made this remarkable discovery about the time you and the Biograph Company came together, and

you began to try to enforce the Latham patent? A. No, sir. 1

Q. When did you make that discovery? A. I think Mr. Marvin told me I was wrong in my belief as to the facts as to the question of the priority of invention between Armat and Latham.

Q. Did Mr. Marvin call to your attention any decision of the Court upholding the Latham patent? A. Not at that time, but later Judge Coxe, in this Circuit, found that Mr. Latham was the primary inventor.

Q. Are you frank in your last answer, Mr. Witness? A. I try to be always frank. 2

Q. Was that opinion of Judge Coxe a dissenting opinion? A. It was.

Q. It was not the opinion of the Court, was it? A. No, sir.

Q. Then, when you say that Judge Coxe found such and such, you mean to say he filed a dissenting opinion, disagreeing with the majority of the Court? A. I mean Judge Coxe, in investigating the question of priority between Armat and Latham, decided that Latham antedated Armat. The decision of the Court was purely on the question of the scope of the patent but not as to its validity. 3

Q. And the decision of the Court was against Judge Coxe, the decision of the majority of the Court? A. Only on the question of the scope of the patent. The Court did not consider the question of validity but assumed the patent to be valid, and held it was not infringed by the camera. In other words, that the claims were not broad enough to include a camera.

Q. In other words, the Court held that the Latham patent did not apply to a camera, was that it? A. Yes, sir, that was it. 4

Q. Now, witness, you testified generally yesterday in regard to the purposes in forming the General Film Company. Are you a director of the General Film Company? A. Yes, sir.

Q. Have you been one of the directors since its formation? A. Since the first meeting of the stockholders.

Q. And you represented the Edison Company in your connection with the General Film Company? A. Up to about December, 1912, I did, yes, sir.

1 Q. Then in the negotiations or conferences which resulted in the formation of the General Film Company you participated as a representative of the Edison interests? A. Yes, sir.

Q. I want to direct your attention to the following testimony in the record, first, at page 251, Petitioner's Exhibit No. 78, being a letter addressed by J. J. Kennedy to William Pelzer, Secretary, dated January 23, 1912, in which this statement is made:

2 "Dear Sir: Sometime before the General Film Company was organized, an estimate of the value of the businesses of exchanges leasing licensed motion pictures was made by men familiar with the manufacture of motion pictures, and also with the business of exchanges.

3 "According to this estimate, the value of said business was \$3,468,847." I direct your attention to Petitioner's Exhibit No. 80, Record, page 265, being the minutes of a regular meeting of the Board of Directors of the General Film Company, held at 10 Fifth Avenue, New York City, October 11th, 1910, at 4:30 P. M. "Present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Smith, Spoor, and Pelzer, Secretary.

"Mr. Kennedy reported on behalf of the Executive Committee that the Company had purchased 39 exchanges, and made the following detailed report of conditions as of October 10, 1910:

"Number of Licensed Exchanges in entire country, including Yale Company of St. Louis, 59.

"Owned by General Film Company, 39.

"Not owned by General Film Company, 20.

"Percentage of Exchanges owned by General Film Co., 66%.

4 "Percentage of business of entire country controlled by General Film Company, based on reels, 71%.

"Payments authorized for exchanges owned October 10th, Stock \$591,400, Cash \$1,483,200.

"Prices—actual—including interest amounting to \$90,500, Stock \$535,900, cash \$1,369,600; Saving \$55,500 stock, and \$113,600 cash.

"Total payments authorized for all exchanges in entire country, Stock \$988,800, Cash \$2,480,000."

Now, Mr. Dyer, when was that authority given by the

Directors of the General Film Company naming this figure, which in stock and cash aggregates \$3,468,800, for all exchanges in the entire country? A. I have no recollection of authority ever having been given by the Directors. 1

Q. How did that figure and that statement get into the minutes of the Directors as a statement of the fact, namely, that authority had been granted, if authority had not been granted? A. I would like to say, in the first place, that the letter referred to in the previous question from Mr. Kennedy to Mr. Pelzer, is a letter I knew nothing of until my attention was directed to the fact that it had been introduced in this case; and I know nothing about any estimate having been made prior to the organization of the General Film Company, as Mr. Kennedy states. 2

Q. Mr. Kennedy was the President of the General Film Company at the time that letter was written, was he? A. Yes, he was the President.

Q. And who was Mr. Pelzer, to whom the letter was addressed? A. Secretary of the company at that time.

Q. Mr. Kennedy had been President of the company from the date of the formation of the company up to and after the date of that letter? A. Yes, sir. 3

Q. And Mr. Kennedy was the man who, on behalf of the General Film Company, conducted the negotiations resulting in the purchase of the several exchanges? A. I think he had largely to do with that particular work. That is, he had more to do with it than any other officer of the General Film Company.

Q. Now, going back to my question that you have not answered. A. Please read the question.

The question was read as follows:

“How did that figure, and that statement, get into the minutes of the Directors as a statement of the fact, namely, that authority had been granted, if authority had not been granted?” 4

A. I can only state that I recall Mr. Kennedy having read this statement, or having stated the effect of the statement at the meeting in question, but I do not recall any meeting of the Board where any authority along the lines suggested in his report was given.

1 Q. What is the figure Mr. Kennedy says on January 23rd, 1912, was the original estimate? A. According to the estimate the value of the business was \$3,468,847.

Q. What is the figure that he names in the minutes of October 11th, 1910? A. Adding the amount of stock to the amount of cash the result is, \$3,468,800.

Q. Then there is a difference of \$47 only? A. Yes, sir, in those two statements.

2 Q. I call your attention to Petitioner's Exhibit 83, page 278 of the record, being the minutes of a regular meeting of the Directors of the General Film Company, held at 80 Fifth Avenue, New York City, January 16th, 1911, at 4 P. M. Present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Spoor and Pelzer, Secretary. Also Messrs. Blackton, Marvin, Paul Melies and Rock, and so forth. Then it says that Mr. Kennedy made the following report of the business obligations, and so forth. Now, here are the words: "Cash to be paid in instalments, \$1,600,300.00; interest, \$100,853.00; seven per cent. stock, \$646,200.00." Then, "Original estimate of exchanges not bought, but still licensed, \$351,300.00, and seven per cent. stock, \$140,100.00." Did you ever see this
3 original estimate, Mr. Dyer? A. No, sir; I saw no estimate at all. The only statement I recall in connection with this matter is the minutes of the former meeting that we were talking about, and although I am indicated as President at that meeting you just read, and undoubtedly was President, I do not recall the figures given at that meeting.

Q. As a matter of fact, Mr. Dyer, whether or not the purpose existed prior to the formation of the General Film Company by the organizers of the General Film Company to acquire all the licensed exchanges, the fact is that eighteen months or thereabouts after the formation of the General
4 Film Company, all those licensed exchanges had passed out of existence either by reason of the purchase by the General Film Company, or the cancellation of their licenses, except one licensed exchange, the Greater New York Film Rental Company? A. I do not recall when the last exchange was taken over, but it is a fact that for some time, and probably from some time as far back as 1911, the exchanges which formerly were in business, or rather, were in business at the time the General Film Company was organized, sold their films to the General Film Company, which thereafter

handled them, but I do not think the identity of those exchanges ended. I think that some of them are still in existence now without doing any business; in other words, the exchanges were not terminated, but the supply of film was bought, because I know—my recollection is very clear that the payments that we are making now on the goods bought at that time, some of the payments, are made to former exchange names.

Q. Do you consider that last answer of yours a frank and truthful statement? A. My statements are always truthful, Mr. Grosvenor, and I try to be as frank as I can. I am trying to answer your questions without reservation at all, and I think that your question implied that the exchanges had actually ceased and terminated, and I wanted to make it perfectly clear that I did not think that was so, although I am willing to admit that for all practical purposes, that might be so.

Q. What might be so? A. That for all practical purposes, the exchanges had terminated.

Q. Let us get at it in another way, Mr. Dyer. After the Patents Company was organized, it licensed approximately one hundred exchanges to handle the so-called licensed film, isn't that right? A. Yes, sir.

Q. A year or two later the General Film Company was organized, isn't that right? A. Yes, sir.

Q. Eighteen months after the General Film Company was organized, was there one of those one hundred exchanges in the United States handling licensed film, except the Greater New York Film Rental Company? A. I am not certain about the eighteen months, but after sometime in 1911 that is quite true.

Q. Is there one of those hundred-odd exchanges that is today handling the so-called licensed film, other than the Greater New York Film Rental Company? A. No, sir.

Q. Now, then, you say that the purpose did not exist in the organizers of the General Film Company to acquire the business of those 100 exchanges. I understood you to so testify yesterday or the day before on direct examination by your counsel. A. The purpose did not exist in my mind, and so far as I could tell from conferences with my associates, I do not think it existed in their minds.

Q. Well, please state when the purpose was born which

- 1 has resulted in the acquisition of all of those companies except the Greater New York Film Rental Company.

Mr. KINGSLEY: I object to the question as incompetent, also object to the form of it, as embodying a conclusion which the witness is asked to endorse.

Mr. CALDWELL: And I further object to it on the ground that it assumes the existence of a fact which has not been proven.

- 2 The Witness: Will you read the question?

The Examiner repeats the question as follows:

“Q. Well, please state when the purpose was born which has resulted in the acquisition of all of those companies except the Greater New York Film Rental Company.”

The Witness: I am not able to state that there was ever such a purpose born. My belief is that the exchanges came to us to sell out.

- 3 By Mr. GROSVENOR:

Q. Then you got the exchanges without having the purpose to get them, is that it?

Mr. KINGSLEY: I object to the question as being an improper characterization of the preceding answers of the witness.

The Witness: Will you read the question, please?

- 4 The Examiner repeats the question as follows:

“Q. Then you got the exchanges without having the purpose to get them, is that it?”

The Witness: It was not our purpose to get them when the General Film Company was formed, and I think the acquisition of the exchanges was a development which came from an initiative on the part of the exchanges, and not on our part.

By Mr. GROSVENOR:

1

Q. Going back to the Film Service Association, Mr. Dyer, and to the licenses issued by the Edison Company to the rental exchanges, the fact is, is it not, that those rental exchange licenses are based entirely on reissue No. 12,192, that is, the film reissue patent? A. That is my recollection, but the license states. I would like to refresh my recollection on that before I answer definitely. Having refreshed my recollection by looking at Petitioner's Exhibit 91, that is correct.

Q. And it is true, is it not, that the rental exchange license agreement issued by the Patents Company to rental exchanges in the beginning of 1909, was also based exclusively on reissue letters patent No. 12,192, namely, the film patent? A. Will you read the question please? 2

The Examiner repeats the question as follows:

"Q. And it is true, is it not, that the rental exchange license agreement issued by the Patents Company to rental exchanges in the beginning of 1909, was also based exclusively on reissue letters patent No. 12,192, namely, the film patent?" 3

The Witness: No, sir, it is not true.

By Mr. GROSVENOR:

Q. Will you please name any patent other than No. 12,192 which the rental exchange is licensed to use in that license, Petitioner's Exhibit No. 8, that is to say, what license right is granted under the terms of that exchange agreement? A. I apologize, Mr. Grosvenor. That is correct. 4

Mr. CALDWELL: I object to the question, on the ground that it calls for the construction of a written instrument which is already in evidence, and, therefore, calls for purely a legal conclusion.

Mr. GROSVENOR: Now, go back to that answer, please, Mr. Examiner, where the witness apologized, and read the question and answer.

The Examiner repeats the question and answer as follows:

- 1 “Q. Will you please name any patent other than No. 12,192, which the rental exchange is licensed to use in that license, Petitioner’s Exhibit No. 8, that is to say, what license right is granted under the terms of that exchange agreement? A. I apologize, Mr. Grosvenor. That is correct.”

- 2 The Witness: Let me go ahead now. The exchange license also refers to other patents owned by the Patents Company, and there would, therefore, be a question as to whether any rights by implication, were included under those patents.

By Mr. GROSVENOR:

- 3 Q. This granting clause in this exchange agreement says, “The licensor hereby grants to the licensee for the term, and subject to the conditions expressed in the conditions of the license hereinafter set forth, the license under the said reissued letters patent No. 12,192, to lease licensed motion pictures from the licensed manufacturers and importers, and to sublease said licensed motion pictures, for use only on projecting machines licensed by the licensor under letters patent owned by it.” The only express license granted to the rental exchange, in the rental exchange agreement, is that contained in that clause, is it not, that is, the license under the said reissued letters patent No. 12,192?

- 4 Mr. CALDWELL: I object to that on the ground that it calls upon the witness to construe the contents of a written document which is in evidence, and on the further ground that the document speaks for itself.

Mr. GROSVENOR: Look at it, Mr. Dyer.

The Witness: Now, will you read the question?

The Examiner repeats the question as follows:

“Q. This granting clause in this exchange agreement says, ‘The licensor hereby grants to the licensee for the term, and subject to the conditions expressed in the conditions of the license hereinafter set forth, the license under the said reissued letters patent

No. 12,192, to lease licensed motion pictures from the licensed manufacturers and importers, and to sub-lease said licensed motion pictures for use only on projecting machines licensed by the licensor under letters patent owned by it.' The only express license granted to the rental exchange in the rental exchange agreement, is that contained in that clause, is it not, that is, the license under the said reissue letters patent, No. 12,192?" 1

The Witness: No. Upon reflection, and I have been giving rather curbstone opinions to your questions—it strikes me that the expression, "to sublease said licensed motion pictures for use only on projecting machines licensed by the licensor, under letters patent owned by it," includes the other patents. 2

Q. The other patents are not named, are they? A. Yes, sir, they are named in the first part of the license agreement.

Q. Do you think that is a frank answer? A. I resent that.

Mr. KINGSLEY: I object to the witness being asked to characterize his own answer. 3

The Witness: My answers are always frank, and I resent the imputation.

By Mr. GROSVENOR:

Q. Mr. Dyer, did you have charge of the suits that were brought against the various exhibitors in the Spring of 1908 in Chicago under the film patent? A. Yes, sir.

Q. How many suits were brought under the Film Patent at that time? A. I don't recall. Quite a good number. 4

Q. Something over forty, weren't there? A. I don't think there were so many as forty. I thought there were in the neighborhood of thirty.

Q. And most of those were in Chicago? A. Yes, sir.

Q. And many of them were against theatres, weren't they? A. Yes, sir, I think they all were.

Q. This was after the conclusion of the so-called Edi-

1 son licenses, and the beginning of the war between the Edison camp and the Biograph camp? A. That is correct.

Q. Had there been any period prior to this time, when you had brought a lot of suits against motion picture theatres, based on the Film Patent, and if so, when? A. I do not recall that there was any period.

Q. Were these theatres all theatres that were taking the Kleine and Biograph service? A. That I do not recall, but they were all theatres using unlicensed film.

2 Q. That is to say, they were all theatres that were taking film other than that made by the so-called Edison licensees? A. Yes, sir.

Q. Theatres generally throughout the country had been displaying motion picture films from the date 1904, the date of the film reissue No. 12,192, down to the Spring of 1908, when these suits were brought? A. Yes, sir, that is correct.

Q. I show you a paper, a copy of a contract, dated April 21st, 1910, between the Biograph Company and the General Film Company. Will you please look at that?

3 Mr. GROSVENOR: Mr. Examiner, will you mark that as an exhibit?

The Examiner marks the paper examined by the witness as Petitioner's Exhibit No. 242.

By Mr. GROSVENOR:

4 Q. Mr. Dyer, were a series of contracts of the same tenor as this instrument which I have shown you, executed on that date named, April 21st, 1910, between the General Film Company and each of the so-called Patents Company licensees? A. I think that is so, but I cannot state whether they were all executed on that day or not.

Q. In any event, they were executed about that time? A. I think that is so, yes.

Q. It is a fact, is it not, that all the common stock of the General Film Company was portioned out among the Patents Company licensees? A. It is not.

Q. How much of that common stock was owned or taken by others than the Patents Company licensees when the General Film Company was organized? A. In the case of the Essanay Company, the stock stands in the name of

George K. Spoor, and in the case of the Selig Company, it stands in the name of W. N. Selig. 1

Q. And George K. Spoor is the principal owner and officer of the Essanay Company, one of the Patents Company licensees? A. I understand so.

Q. And Selig is the principal owner and officer and manager of the Selig Company, another of the Patents Company licensees? A. I understand that is so, but I made my statement to emphasize the fact that the agreements which you speak of were made with the Selig and Essanay Companies and not with those stockholders.

Q. Well, all of the common stock of the General Film Company when it was organized, was issued to the Patents Company licensees except the amounts which were issued to the two individuals you have named, Spoor and Selig, who received the allotment of their companies instead of the allotment going directly to those companies? A. I think that is so. 2

Q. You may state whether or not the common stock in the General Film Company held by the Edison Company was deposited pursuant to this agreement with the Empire Trust Company, subject to the condition that it should be released or bought back in case the Edison Company went out of business? A. I do not think it was. I do not think any of the stock was deposited with the Empire Trust Company. 3

Q. Are you able to state whether or not these agreements were carried into effect? A. They were not, no, sir.

Q. They were not carried into effect? A. They were not carried into effect, no, sir.

Q. Was the common stock of the General Film Company deposited with any depository? A. I do not think it was.

Q. Are you able to testify whether or not— A. No, sir, I am not able to testify. The Empire Trust Company would be the company, but I do not think any stock was. 4

Q. Who would be able to testify on the part of the Edison Company directly as to whether or not any stock held by the Edison Company in the General Film Company was at any time deposited with a depository? A. The Treasurer of the company could testify positively to that fact.

MR. GROSVENOR: I offer this agreement in evidence.

MR. CALDWELL: The offer of that paper is objected

1 to on the ground that the evidence shows it was never carried into effect.

Mr. KINGSLEY: The same objection.

The paper, marked "Petitioner's Exhibit No. 242," is received in evidence and is as follows:

Petitioner's Exhibit No. 242.

2 TO ALL WHOM IT MAY CONCERN: Be It Known that the Biograph Company (hereinafter called the Vendor), a corporation organized and existing under the Laws of the State of New Jersey, and having a place of business in the City, County and State of New York, for and in consideration of the sum of One Dollar (\$1), to it in hand paid by the GENERAL FILM COMPANY (hereinafter called the Vendee), a corporation organized and existing under the Laws of the State of Maine, and having an office in the City, County and State of New York, and for other good and valuable considerations from the Vendee to the Vendor moving, the receipt of all of which is hereby acknowledged, hereby covenants and agrees:

3 I. That in case, prior to August 26, 1919, the Vendor should become bankrupt or a certain license in writing now held by the Vendor from the Motion Picture Patents Company, of New York City (to manufacture motion pictures for the use of cameras under reissued letters patent No. 12,037, dated September 30, 1902, letters patent No. 629,063, dated July 18, 1899, and letters patent No. 707,934, dated August 26, 1902, and containing the inventions of reissued letters patent No. 12,192, dated January 12, 1904) should be terminated, then and in either of such cases the Vendee shall, on
4 paying therefor one hundred dollars per share to the Empire Trust Company of 42 Broadway, New York City, as Trustee for the use and benefit of the Vendor promptly after knowledge by the Vendee of the happening of such event or events, become the owner of the entire right, title and interest in and to the one hundred shares of the common stock of the Vendee now owned by the Vendor, and any and all additional shares of common stock of the Vendee hereafter, and prior to August 26, 1919, owned or controlled by the Vendor; and in order to facilitate the transfer in such case of such shares

to the Vendee, the Vendor will, at even date herewith, duly execute the assignment and power of attorney endorsed on the certificate for the one hundred shares aforesaid now owned by the Vendor and deposit said certificate, assignment and power of attorney, with the Trustee aforesaid, and will thereafter, and as soon as the ownership or control thereof is acquired by the Vendor, execute or cause to be executed in like manner the assignments and powers of attorney endorsed on the certificates of any and all additional shares of such common stock the Vendor may hereafter own or control, and deposit such certificates, assignments and powers of attorney with the said Trustee; said Trustee being hereby authorized and empowered by the Vendor to deliver to the Vendee all of said certificates so deposited with the Trustee on the happening, prior to August 26, 1919, of either of the events aforesaid and the payment as aforesaid by the Vendee of the sum of One Hundred (100) Dollars for each share of such stock to said Trustee for the use and benefit of the said Vendor.

II. That the Vendor will not, prior to August 26, 1919, without the consent in writing of the Vendee, assign, transfer or otherwise dispose of or encumber any of the stock aforesaid now owned or hereafter owned or controlled by the Vendor, or of any right, title or interest therein or thereunder, to any person, firm or corporation other than the Vendee.

III. That a duplicate of this option, duly executed by the Vendor, shall be deposited with said Trustee.

IN WITNESS WHEREOF the said Vendor has executed these presents (in duplicate) this 21st day of April, 1910.

(sg.) BIOGRAPH COMPANY,

By (Sg) J. J. Kennedy, President.

In the Presence of

(Sg) J. J. Kennedy.

(Sg) William Pelzer.

By Mr. GROSVENOR:

Q. Mr. Dyer, who was the principal attorney in devising

1 this so-called Patents Company and the various Patents Company license agreements, that is, between the Patents Company and the manufacturers, and then between the Patents Company and the exchanges, and the general arrangement? A. I think Mr. M. B. Philipp.

Q. And was he the attorney in the forming of the General Film Company, and the issuing of those licenses?

A. That is my recollection, yes, sir.

Q. And was he the attorney in making the agreements between the Patents Company and the Eastman Kodak Company? A. Yes, sir, although he was also the attorney for the Eastman Kodak Company, I think.

Q. And he was also the attorney for Pathe Freres, was he not? A. Yes, sir.

Redirect examination by Mr. CALDWELL:

Q. Mr. Dyer, why was the litigation conducted against the Biograph Company, subsequent to 1904, on the camera reissue given precedence over the litigation on the film reissue? A. As I have stated, it is my present recollection that when the two reissue patents were granted, No. 12,037, and 12,038, suits were brought simultaneously upon both patents against the Biograph Company, and those suits progressed simultaneously some time. It then developed that the Biograph Company were relying upon the fact that the word "equi-distant" had been omitted from the claims of the first film reissue, No. 12,038, and intended to argue that because of this omission, these claims were actually broader than the claims of the original patent, not narrower. Therefore, the suit on the first film reissue patent was dropped, and that patent was reissued again in January, 1904, No. 12,192. At that time, we had gone ahead for some time, probably upwards of two years, or almost two years, with the camera patent, and to start a suit all over again on the film patent would necessitate commencing it from the beginning, so that the suit on the camera reissue patent was, therefore, the one that was pressed, and we felt that if we should succeed in this suit, it would have the same effect as if we had succeeded in both suits.

Q. Were not the defenses in the two suits on the camera and the film, respectively, substantially the same?

Mr. GROSVENOR: I object to that as improper, and further, because it states something which has not been testified to—in other words, there was not any suit on the film patent reissue No. 12,192 for four years, and, therefore, there was no defense to characterize. 1

Mr. CALDWELL: He has stated, however, that there was a suit on that first film reissue.

Mr. GROSVENOR: If you refer, then, to No. 12,038, which was abandoned in 1904, of course, that makes the question more distinct. What is the question? 2

The Examiner repeats the question as follows:

“Q. Were not the defenses in the two suits on the camera and the film, respectively, substantially the same?”

The Witness: Well, of course, I don't remember the details of the answers, but my recollection is that they were the usual defenses in patent suits, and I believe also that there were some specific defenses that would not be common to both suits, that is to say, the defense in the film patent suit, probably asserted the broadening of the claim, and the defense in the camera patent suit probably set up a large number of alleged anticipating machines, which I would not suppose would be included in the defense on the film patent, but they were, as I recall, the usual stereotyped patent defenses. 3

By Mr. CALDWELL:

Q. Was not a large part of the prior art set up by these defenses in the two suits, substantially the same? A. I think that is so. 4

Q. Did you believe, at that time, that the sustaining of the camera patent would give you substantially the same monopoly of the art that would have resulted from the sustaining of both patents?

Mr. GROSVENOR: Objected to as to what his belief would have been, as immaterial.

Mr. CALDWELL: I believe it is material, on the

1 charge that the patent owner was negligent or sloth-
 2 ful in the prosecution of his patent rights.

The Witness: Yes, we considered the monopoly practically co-extensive in both cases.

By Mr. KINGSLEY:

Q. Did Mr. Philipp represent the Edison Company at the time the Edison license agreement was formed and promulgated? A. No, sir, he represented the Pathe concern at that time.

Q. Did Mr. Philipp represent the Edison Company in connection with the negotiations which culminated in the formation of the Patents Company? A. No, sir, I think he directly represented the Pathe concern.

Q. Did you represent the Edison Company, either alone or in conjunction with someone else in connection with the negotiations, regarding which I have just asked you? A. I represented the Edison Company in all the negotiations. I was the representative of the Edison Company.

Q. Do you know whether or not Mr. Philipp prepared the rental exchange license? A. I do not recall that.

Q. Do you know whether or not Mr. Philipp prepared the projecting machine license of the Motion Picture Patents Company? By that I mean the license to manufacture projecting machines. A. I don't recall that.

Recross examination by Mr. GROSVENOR:

Mr. Dyer, the greater part of the commerce, as I understand your testimony on direct examination, relating to motion pictures, is the commerce in positive film; isn't that the fact?

Mr. CALDWELL: That question is objected to on the ground that it assumes that there is a commerce in the motion picture art.

Mr. KINGSLEY: I also object to the question on the ground that it is attempting to compel the witness to characterize transactions in the motion picture art as commerce.

Mr. GROSVENOR: I do not want to put you in an
 unfortunate predicament, Mr. Dyer. You testified
 yesterday that at any one moment there are some 20,-
 000 films in use or in transit—which—in the coun-
 try? 1

The Witness: In transit.

By Mr. GROSVENOR:

Q. That is, at this very moment when you are talk-
 ing, it is your best judgment that there are 20,000 different
 films in transit going from the manufacturers to the ex-
 changes, or from the exchanges to the exhibitors, or on their
 homeward journey from the exhibitors to the rental ex-
 changes? 2

Mr. KINGSLEY: I object to that question, on the
 ground that the witness specifically stated yesterday
 when testifying regarding this phase of the case,
 20,000 plays were in transit.

Mr. GROSVENOR: Will you read the question now,
 and let him answer? He nodded, but he did not
 answer. 3

The Examiner repeats the question as follows:

“Q. That is, at this very moment when you
 are talking, it is your best judgment that there are
 20,000 different films in transit going from the man-
 ufacturers to the exchanges, or from the exchanges
 to the exhibitors, or on their homeward journey from
 the exhibitors to the rental exchanges?”

The Witness: I think it within the bounds of possi-
 bility to say that at all times there are 20,000 of these mo-
 tion picture plays in their passage from the producer to the
 exchanges, from the exchanges to the exhibitors, from the
 exhibitors back to the exchanges, and from the exchanges
 back again to the producers. 4

By Mr. GROSVENOR:

Q. Then much the larger portion of the business relat-
 ing to the motion picture art is or consists of the business

- 1 in these motion picture films? A. Yes, sir; that is, the larger part of the business by long odds, is the purely artistic, theatrical side. The sale of machines, and accessories of that kind, is a very small percentage.

Q. And that is an accurate description of the conditions existing in the last five or six years? A. Well, I think five or six years ago there were more machines bought, because theatres were starting, and they were getting their supplies of machines in, and I do not think at the present time so many machines are sold.

- 2 Q. But what I mean is, it has always been the case, has it not, that the business in positive films has been much the larger part of the business, or much larger than any other one branch of the business? A. Much larger than the machine business or any other accessory sales.

Q. Yes. In spite of that fact, in that period from 1904 down to 1908, you were trying to enforce only your—and by “you” I mean the Edison Company—your patent on the camera, and you were not in those years, as you have testified, trying to enforce or maintain your rights or alleged rights under the film reissue No. 12,192?

- 3 Mr. CALDWELL: That is objected to on the ground that it assumes something that the witness has not testified to. He has not testified that they were not endeavoring to enforce their rights under the film patent, but his examination on that point was directed by counsel for the petitioner to the litigation between the Edison Company and the Biograph Company.

- Mr. GROSVENOR: I think, Mr. Caldwell, if you will refer to your last questions on the redirect, you will see that my question is a fair one.

- 4 Mr. CALDWELL: I thought that you were referring to your questions.

The Witness: Will you please read the question?

Mr. GROSVENOR: I understand that you on your redirect brought out the fact that he was pressing the suit on the camera patent.

Mr. CALDWELL: (interrupting): Against the Biograph Company.

Mr. GROSVENOR: On the ground that he thought
that would establish their entire rights. 1

Mr. CALDWELL: Against the Biograph Company.

Mr. GROSVENOR: Read the question.

The Examiner repeats the question as follows:

"Q. In spite of that fact, in that period from
1904 down to 1908, you were trying to enforce only
your—and by 'you' I mean the Edison Company—
your patent on the camera, and you were not in those
years, as you have testified, trying to enforce or
maintain your rights or alleged rights under the film
reissue No. 12,192?" 2

The Witness: As I have stated with regard to the patents, they were substantially co-extensive, and the suit against the Biograph Company was particularly selected—

Mr. GROSVENOR: What suit? The suit on the film?

The Witness: The suit on the camera patent. The camera reissue. It was selected because if we were successful in that suit, as we eventually were, we would be able to get preliminary injunctions; in other words, it was not necessary to go ahead with the elaborate details of a patent suit against the other infringers. 3

By Mr. GROSVENOR:

Q. You did not expect to be able to stop the importation of foreign films by winning a suit against the Biograph Company on the camera patent, did you? A. I do not think that foreign films would be stopped by the successful termination of the suit on a camera patent, but that was the most potent infringement at the time, and we were confining our energies practically entirely to that. 4

Q. That is, the camera patent? A. The camera patent.

Q. Mr. Dyer, you bought, didn't you, in the height of the war between the Edison and the Biograph companies, some shares of the stock of the Biograph Company? A. Yes.

Q. When was that purchase made? A. I do not recall when that was made, but Mr. Marion of the Kalem Company told me that he had some stock of the Biograph Company,

- 1 with which he was formerly connected, and in view of the bitterness of the struggle between the two concerns, I thought it might be well to get hold of this stock, so that, if possible, we could attend stockholders' meetings, and we bought the stock. It was some time after the Edison licenses were granted and before my negotiations with Mr. Marvin. Therefore I should say it may have been in May or June of 1908.

Examination by Mr. KINGSLEY:

- Q. What was the amount of that stock, Mr. Dyer? A.
2 Twenty-five shares.

Q. What is the par value of those 25 shares? A. My recollection is, that par value was \$100 a share, and we bought it for \$10 a share.

Q. What was the capitalization of the Biograph Company at that time? A. I don't remember. Very large.

-
- Thereupon, ALBERT E. SMITH, a witness called on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Mr. GROSVENOR: Mr. Smith, have you been subpoenaed in this suit? Was any paper served on you asking you to appear here?

The Witness: I have had so many papers served on me, I could not say whether I have been served in this suit or not.

- Mr. GROSVENOR: You cannot answer, then, whether
4 or not you have.

The Witness: I cannot answer.

Direct examination by Mr. KINGSLEY:

Q. You have frequently been under subpoena during the last two months, have you not, in the suit of the Greater New York Film Rental Company *versus* The Biograph Company and the General Film Company? A. Yes, sir.

Q. And have appeared before a Master, giving testimony from time to time, in that suit? A. Yes. 1

Mr. GROSVENOR: I want to know, to get this clear on the record, on whose behalf you appear here? You are a defendant in this suit. Are you appearing to testify for yourself?

The Witness: I don't know.

Mr. GROSVENOR: Well, I want to tell you, then, in order that there may be no difficulty in this situation— 2

Mr. KINGSLEY: Have you subpœnaed the witness, Mr. Grosvenor?

Mr. GROSVENOR: That, in case you have been subpœnaed, and you say you don't know whether you have been or not, but in case you have been subpœnaed to appear here and testify for any of the other defendants, and you are being examined by counsel for some of the other defendants, that such appearance in response to a subpoena, if you have been subpœnaed, will not give you any immunity from any proceeding of a different character under the Act. I think I should state that to you, in fairness, as you have not been able to answer freely as to whether or not you have been subpœnaed. 3

The Witness: Yes.

Mr. GROSVENOR: That is, you are appearing here, so far as the Government is advised, voluntarily, in your own behalf, to testify. 4

By Mr. KINGSLEY:

Q. Have you discussed the question of immunity with anyone, Mr. Smith? A. No, I don't think I have.

Q. You have not been subpœnaed by the Government, have you, in this case? A. Not to my knowledge.

Q. What is your business, Mr. Smith? A. Engaged in the production of motion pictures. Motion picture plays.

1 Q. How long have you been in that business? A. Since 1896 or 1897.

Q. With what company or firm are you connected or identified, at the present time? A. The Vitagraph Company.

Q. How long have you been connected with the Vitagraph Company? A. Since the date specified.

Q. During all the period regarding which you have testified you have been actively interested in the affairs of the Vitagraph Company of America? A. Actively.

2 Q. Do you recall, Mr. Smith, that one William Fox called upon you in the middle of November, 1911, with reference to the cancellation of the license of the Greater New York Film Rental Company, and with reference to negotiations with Mr. Kennedy of the General Film Company, which had for their object the purchase of the Greater New York Film Rental Company's rental exchange? A. I do.

Q. Where were you at the time he called upon you? A. I was located at the Vitagraph studio in Brooklyn.

3 Q. And did you seek this conversation with Mr. Fox? A. No, sir.

Q. Had you done anything to bring about the interview with him? A. No, sir.

Q. Had you communicated with him in any way, and asked him to call upon you? A. No, sir.

Q. Was this conversation, so far as you know, one which he sought himself with you? A. Yes.

Q. When you began this conversation, or at any time during the course of this conversation, was any pledge of secrecy made by you to Mr. Fox? A. Not that I recollect.

4 Q. Did he make any pledge of secrecy to you regarding the substance of the conversation, or its details? A. Not that I recollect.

Q. Was there any obligation on your part not to state what happened, or what was said, at that meeting, and during that interview? A. No, sir.

Q. Did you, at any time, regard the conversation as a confidential one, in any sense of the word? A. No, sir.

Q. When Mr. Fox called upon you, did you say to him, "I know what you are here for, son. You know, for

the past year, I have been fighting like the devil for you, and arguing against the wisdom of the cancellation of your license, and during all this period, I seem to have had Mr. Berst's, of Pathe Freres, support, in every one of my arguments on the floor, at every one of these manufacturers' meetings. Between Berst and myself, and one or two others, we were able to get the vote with us; we were always able to prevent the cancellation of your license." Did you make this remark to him, either in terms, or in substance, when he called upon you on the occasion of the interview which he sought with you at the Vitagraph Company's offices in Brooklyn? A. I did not. 1 2

Q. Did you say to Mr. Fox, on that occasion, when he came into your office, either in terms or in substance, "At the last meeting, they brought the matter up again, and I rose to the floor and made a lengthy address, and told them why it should not be cancelled, and gave the various reasons, as I have done heretofore, and heretofore when I sat down, Mr. Berst would generally rise and do the same thing. This time, when I sat down and looked in Berst's direction, he did not rise. The Chairman asked, was there anything else to be said about it, and no one answered, and they put it to a vote, and they put it over. They voted to cancel your license." Did you say that to him? A. No, sir. 3

Q. Did you use those words? A. No, sir.

Q. Did you tell him that they had "put it over?" A. I did not.

Q. On the occasion when Mr. Fox called upon you on or about the middle of November, 1911, at your office in Brooklyn, did you say to Mr. Fox, when referring to the cancellation of the license of the Greater New York Film Rental Company, either in terms or in substance: "This is all wrong. It is against my liking, and against the liking of our concern." Did you say that to him? A. I have no recollection of making such a statement. 4

Q. On the occasion to which I have just referred, when Mr. Fox called upon you, did you say to him, either in terms or in substance: "We realize that we are monkeying with fire. We know that if you do not sell to us, we are going to get a fight. We know of your past record, what you have done for motion pictures, with the authorities, at the inception of the business, when the authorities were

1 objecting to the exhibition of pictures." Did you say that to him? A. I think the last part of that sentence Mr. Fox said to me. Not I said to him.

Q. Do you recall that Mr. Fox said something to you about the beneficial service that he had rendered the motion picture art, in his estimation, at some prior time? A. Yes.

Q. Did he call your attention to the fact, or the alleged fact, that at some prior time he had had some controversy with the authorities, resulting in litigation, over the license of moving picture theatres? A. Yes.

2 Q. This was something that he called to your attention, and not something that you called to his attention? A. Those were his statements.

Q. These statements which he now says you uttered, were, in reality, uttered by him? A. Yes.

Q. On the occasion of this alleged confidential interview? A. Yes.

Q. On the occasion to which I have just referred, when Mr. Fox called at your office in Brooklyn, in November, 1911, did you say to him, either in terms or in substance:
3 "You have always led the fight for everybody, and I sort of feel that you are going to do it again. I tried to explain that to these men, and tried to tell them that it was all wrong. That I would rather see you in. I tried to tell them that it would look better to the outside world to have one man outside of our combination. We could not be charged with having an illegal combination then." Did you say that to him? A. I never made that statement, but Mr. Fox told me that he had always led the fight for everybody.

Q. Mr. Fox, himself, modestly referred to the alleged
4 fact that he had been serving the motion picture art by fighting against outside influences which were inimical to it?

Mr. GROSVENOR: I object to that characterization.

The Witness: Yes.

By Mr. KINGSLEY:

Q. On the occasion that Mr. Fox called upon you in

November, 1911, did you say to him in terms or in substance: "I thought I would want to leave you for the alibi, and I have been able to do that for quite a while, but I cannot do that any more. They simply made up their minds they were going to get you out of the way, and I suppose they will do it?" A. I made no such statement.

Q. When Mr. Fox called upon you in November, 1911, did you say to him either in terms or in substance: "I was the most dumfounded man in the world when I found that Berst had sat down. You know that our organization is the same as any other. It is generally led by one or two men who are in power. Between what Mr. Kennedy says and one or two others, the rest of them are like a lot of sheep, and a lot of lambs, and they all follow suit, and I suppose they brought pressure to bear on Mr. Berst, or he would not have voted against you?" A. I have no recollection of any such conversation.

Q. Did you make any such statement to him, as a matter of fact? A. No, I could not have made it.

Q. On the occasion when he called on you in November, 1911, did you say to him either in terms or in substance: "Now, that is all done. I cannot get it reopened. If I could get it beaten on the floor before the letter was written to you, I am sure I cannot do it now. The best I can do is to try to get you a settlement and to try to get you some money?" A. I did not.

Q. Did you say to Mr. Fox when he called upon you in November of 1911, either in terms or in substance: "Fox, I know in my heart, and I know just as well as you do, that they have got no reason to cancel your license under the license agreement that they have given you?" A. I made no such statement.

Q. Did you say to Mr. Fox on the occasion when he called upon you in November, 1911: "I know, as you do, that you have got your concern to live up to it religiously and carefully. They have tried every which way to find fault with you, and could not do it. I know in my heart and soul that they jobbed you." Did you make this statement to him, either in terms or in substance? A. I did not.

Q. Did you say to him: "I know in my heart and soul that they jobbed you?" A. Positively not.

- 1 Q. Did you say to Mr. Fox when he called upon you in November of 1911, either in terms or in substance: "I told them on the floor that they jobbed you. Under that condition, what is the use of trying to go back and try to get them to reinstate your license? You cannot do it. Let me go and try to get your money for you?" A. Positively not.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M., at the same place.

2

NEW YORK CITY, November 14, 1913.

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., November 14, 1913, at Room 159, Hotel Manhattan, New York City.

The appearances were the same as at the morning session.

Thereupon ALBERT E. SMITH resumed the stand.

- 3 Direct examination continued by Mr. KINGSLEY:

Q. When William Fox called upon you about the middle of November, 1911, did you know at that time that the Motion Picture Patents Company had sent a notification to the Greater New York Film Rental Company of the cancellation of its license? A. I did.

- 4 Q. What was the conversation that you had with Mr. Fox on that occasion? Tell us as nearly as you can what he said to you, and what you said to him? A. I didn't know what Mr. Fox's testimony was in this case until about two weeks ago, when someone sent me a copy of his testimony, or evidence, and then I found that he—

Mr. GROSVENOR: I object to this. The question is to give the conversation with Mr. Fox, not what you found Mr. Fox had done, or what you did.

The Witness: I found that Mr. Fox had taken his own conversation along that line and put it into my mouth, lock, stock and barrel. The interview with Mr. Fox occurred in

this manner: Mr. William T. Rock, the president of our company, called me on the 'phone from our New York office, in Nassau street, and said that Mr. Fox wanted to see me, and would I see him, and I said "Yes," that I would be there all day at the studio, and sometime afterwards Mr. Fox arrived; and he came into our office and told me all of the things that he had done for the furtherance of business in New York, which took a long time, and the details of which I cannot remember, but stated that he had been offered ninety thousand dollars for his exchange, and that he was satisfied to take the ninety thousand dollars, but that he had a partner—I think it was Tim Sullivan—or some politician, who was his partner in the business, who was hard up and needed the money, and therefore, he wanted to get a hundred thousand dollars, to help his partner out, and asked me if I would do what I could to help him get a hundred thousand dollars for his exchange, which I stated I would do.

Q. Was this the substance of the conversation as you remember it? A. That is the substance of it.

Q. You do not attempt, I assume, to tell in detail all that was said there, but you are giving us your best recollection of the general purport and substance of the conversation? A. And the general context of it.

Q. Yes? A. I couldn't remember the details.

Q. Did you as a matter of fact subsequently see anyone with reference to the negotiations between Mr. Fox and whoever was attempting to purchase his film exchange, or negotiating for its purchase? A. I endeavored to get Mr. Kennedy on the 'phone, and to the best of my recollection I was not successful. I think he was out of town, and I think I either telephoned or saw Mr. Berst personally, I am not sure which it was.

Q. Go ahead, Mr. Smith? A. And I told him of Fox's interview with me, and stated that I would be in favor of his getting a hundred thousand dollars.

Q. What corporation was negotiating for the purchase of the Greater New York Film Rental Company at that time? A. The General Film Company.

Q. And were you a director at that time of the General Film Company? A. I was.

Q. Who was in charge of the negotiations on the part of

1 the General Film Company? A. Mr. Kennedy, the president.

Q. Had you, yourself, been concerned or interested in the negotiations between the General Film Company and Mr. Fox prior to the time he called upon you? A. No, sir.

Q. Had you known anything about them at all? A. I am not sure that I did; I may have.

2 Q. Did you know anything about them specifically and to the extent of knowing any of the details, or of the progress of the negotiations? A. No, I don't think I knew much about the negotiations with Mr. Fox before my interview with him or his interview with me.

Q. Did you attend a meeting of the licensees of the Motion Picture Patents Company on or about November 13, 1911, at which the question of recommending to the Patents Company that some action be taken with reference to the Greater New York Film Rental Company's license was discussed? A. I did.

3 Q. Do you recall that meeting? A. I remember that I was there, and the question of the cancellation of the Greater New York Film Rental Company's license was brought up.

Q. Was a report made to the manufacturers by anyone, or any statements made relative to practices which the Greater New York Film Rental Company had permitted? A. Yes, a statement was made setting forth several violations of the license upon the part of the Greater New York Film Rental Company.

4 Mr. GROSVENOR: I object to the witness stating what the statements may have contained, the proper method of proving the statement being to produce the statement.

By Mr. KINGSLEY:

Q. Was this statement a written or a verbal statement? A. Verbal.

Q. Was action thereafter taken, or a vote had upon the question brought before the meeting? A. Yes.

Q. What action did the licensees take? A. Well, there was no opposition, and so, I presume, the license was cancelled.

Q. Do you recall that a recommendation was made to the Patents Company to cancel the license? A. I do not recall the specific manner in which the business was accomplished. 1

Q. Was it the purport of the meeting that such a recommendation be made to the Patents Company? A. I presume so.

Q. Is that your best recollection of the meeting? A. That is my best recollection.

Q. Mr. Smith, do you recall when you first discussed with anyone, the possibility of the formation of a rental exchange in which the licensees of the Motion Picture Patents Company should be interested, and by "licensees" I mean the producers of motion pictures? A. I don't remember any date of such conversations. I remember there were talks about the matter. 2

Q. Can you remember about when you first had some conversation, or talk, or discussion, relative to this proposition of forming a rental exchange? By that, I do not mean to pin you down to any specific date, but about when? A. Some time after the formation of the Patents Company. 3

Q. About a year afterward, would you say? A. Somewhere around that time.

Q. Do you recall that there was a dinner of the manufacturers about a year after the formation of the Motion Picture Patents Company, at which the question came up? A. There was a dinner tendered to Mr. Edison every year, if you refer to that dinner.

Q. Do you recall whether the question came up there or not, or whether you heard it discussed there? A. I have no recollection of hearing the matter mentioned at that dinner. 4

Q. When was that dinner?

Mr. GROSVENOR: What matter are you talking of?

The Witness: The discussion of the formation of a film exchange; I understand, you are referring to that?

Mr. KINGSLEY: Yes. You have no recollection of hearing this subject discussed at the dinner which was given to Mr. Edison?

1 The Witness: No, sir.

By Mr. KINGSLEY:

Q. About what time was this dinner given to Mr. Edison? A. I think it was in December, it usually takes place in December.

Q. Is it your recollection that the dinner to which you refer took place in December, 1909? A. Well, I know that such a dinner has been given every year, but I could not be sure whether I was present. I know on one or
2 two occasions I was absent in Europe.

Q. Did you participate in any discussions with the other licensed producers of the Motion Picture Patents Company, relative to the formation of the General Film Company? A. Yes, I heard the matter talked about, and joined in the discussion at various times.

Q. What was the object and purpose in forming the General Film Company, as you understood it, at the time that it was formed? A. The idea was to form a sort of a model exchange, that might serve as an example to all the exchanges then operating.

3 Q. Were you in favor of the project at first? A. Yes, sir, I think I was.

Q. Were you one of the producers who advocated it, or were you simply one who, after hearing it advocated, adopted the idea? A. Yes, sir, I think I adopted the idea.

Q. What were some of the reasons which, in your judgment, made it desirable to establish a model exchange? A. Well, there were a great many reasons. It sort of came in with the development of the business. I think, to give you a real logical reason, it would be necessary to give a sort of a brief history, showing how exchanges were formulated, if I may do that.
4

Q. You may do so? A. The moving picture business started in 1896, or thereabouts, and at that time it was practically a novelty, and high prices were paid for the exhibition of those pictures, to my positive knowledge, as much as five hundred dollars per week being paid for these exhibitions. These high prices held for, perhaps, about a year, when the novelty commenced to wear off; and a great many people had by that time seen the pictures, and talked about the wonderful smoke, and the falling leaves,

and the chute-the-chutes, and things which had been photo-
graphed to that date, and they were tired of seeing them. 1
Then along in 1898, came the Cuban War, and after that
the Boer War, which revived public interest in motion pic-
tures. And the public was again drawn into the the-
atres to see these pictures showing the troops march-
ing, and I remember the "Funeral of the Maine Vic-
tims," battles, etc., but after a short time the pub-
lic got tired of seeing pictures of soldiers, and then,
if nothing else had occurred, the business would probably
have fallen out of sight; but about that time one George 2
Melies, over in Paris, commenced to bring out a series of
magic pictures, and that was the commencement of the
real entertaining part of the business. Melies made short
stories, first commencing with about sixty feet, and then
jumping to a hundred feet, and then two hundred feet, and
then to three hundred and four hundred feet, lengths
which, at the start, people would think ridiculous; and it
was in these lengths of three hundred and four hundred
feet that he was able to tell the stories which got the
public interested again, and brought them into the theatres
to see these stories told on the sheet, and from that time 3
forth, the business of furnishing picture plays to the
theatres was regularly established; and between 1899 and
1904, and 1905, the Vitagraph Company was very largely
engaged in this branch of the work, having at times as
many as one hundred or more machines working in various
theatres throughout the country. In fact, with the ex-
ception of the Biograph Company, at that time we had
very little competition, but as these picture plays got
to be more popular, there came a larger demand on the
part of the theatres to install that form of amusement in
their programs, and then other people commenced to get 4
into the business. At the time I spoke of, prices had
dropped down to about seventy-five dollars, and a hundred
dollars per week; but with the advent of newcomers, who
were the Kinetograph Company, and George Spoor, in
Chicago, the prices were cut. The Vitagraph Company had
become pretty well established, and people would pay them
a little more money than they would to a newcomer. So
that the other people getting into the business were obliged
to cut prices, which they did, to around fifty dollars, and

1 forty dollars a week. We were obliged to meet those prices, and the next development along that line was when the Kinetograph Company went to the manager of a theatre and offered to sell the manager of the theatre a machine, and teach the electrician of the theatre how to operate the machine, and then they would furnish a program of films for about twenty-five dollars per week. I am quoting these prices to show the downward tendency of the business, and how the rental exchange came into formation.

2 Mr. GROSVENOR: The downward tendency of the prices under this competition?

The Witness: Yes, any way you want to put that. I am trying to get to the point where the reel itself and the play had become a unit of distribution in the rental exchange. We would never trust our films in the hands of an outsider for any purpose, and we always insisted on our own operator being in charge of the machine and film, and, to the best of my recollection, Mr. Waters, of the Kinetograph Company,
3 was the first man who inaugurated the practice of leasing or renting film directly to the theatre without anyone being in charge of the film. That brought the price for the reel down to around twenty-five dollars. The next I remember was when Miles Brothers, a couple of men who had been in the Klondike taking pictures, arrived in New York, via San Francisco, and I am quoting this from one of the Miles brothers conversation with myself at the time, and that is how I knew the way they came. They arrived in New York at about the time when the Biograph Company was selling a lot of copies of its old films at reduced prices to get them off
4 the shelves. Miles Brothers did not have much money at that time, to the best of my knowledge, and they bought a number of these old copies of films, and went across the country to San Francisco, stopping at the small towns en route, and making arrangements with the managers of theatres in these small towns to supply them with programs from week to week on a circuit basis. I think Miles Brothers were the first ones to establish what they called a "traveling picture circuit." For instance, for about ten dollars, somewhere (I am guessing at that price), but I think they got down to about ten dollars a week. They would start a reel of film

from San Francisco to a town, and then the manager of that theatre would express it to another town, and so on, and it would go around in a regular circuit, and finally it came back to them, after the film had been exhibited in anywhere from ten to forty or fifty different towns, and it was about this time that the different small theatres throughout the country commenced to start in business, which would be somewhere around 1904 or 1905, and by this time the manufacture or the production of films had reached the point where they made a story in five or six or seven hundred feet. As these new theatres commenced to start up throughout the country it became too expensive for them to purchase their own stories—film stories—as many of them had been doing up to that date, and so different men in different cities started to buy films, and rent them out to these theatres—particularly, as by the opening of these moving picture theatres a lot of small circuses and street carnival companies had been put out of business. It appears that simultaneously with the opening of these small theatres it became no longer profitable for a street carnival company or a small circus to go into small towns throughout the various States of the Union, and so these men, who had been lecturers and ballyhoos in front of these shows, and managers of these small circuses and street carnivals, had nothing to do—they had small capital—

Mr. GROSVENOR: What is a street carnival?

The Witness: A street carnival is a sort of hybrid circus. The managers of these street carnival companies would gather around them, fortune tellers and black-tent shows. A "black-tent show" was a moving picture exhibition given in a black tent, and usually animals and some freaks, which freaks were, or had been, thrown out of business at that time by the closing of dime museums in the big cities; and that is another interlocking characteristic. The opening of these various theatres closed a lot of dime museums—and as the various moving picture theatres opened, the various dime museums closed, and they had no work to do. Hammerstein had not started exhibiting anything in the way of freaks at that time, and so some of these men would have dime museums, and started to carry dime museums on the road,

- 1 but I am getting away from the point I was trying to make. They would go into a town and make arrangements with the officials of that town to give a carnival in the streets which would draw into that town all the people from the outlying country, and the people would come in to see the various shows given in tents, along, probably, the main street of that town or city, and come in to see the shows, and they would spend money in the stores, and so the town prospered, and, I presume, because they prospered, they made it interesting for the man who brought them to the towns and cities. Never
- 2 having been interested in a street carnival, I cannot tell you about the inside workings of it. But, to get back to the exchange. As these theatres started out or opened up in the small towns throughout the country, these street carnivals were thrown out of business, and the men who were in charge of them and who worked with them, being obliged to make a livelihood, they looked around and they saw this new art spring into prominence. They started it very quickly, and I presume they must have been men who could make up their minds very quickly, and they would then open up exchanges; they watched other men jump into the same field,
- 3 and so they jumped in with a very few dollars, or a very few hundred dollars, as the case may be, and there was a time over night, so to speak, that we had scores of exchanges throughout the United States who commenced to buy films and lease them to little store shows which sprung up even more quickly than the exchanges sprung up.

- Now, we come back to the producer. These orders commenced to come in for the films and film stories, and these producers would turn out the positive prints and sell them to these exchanges, and the exchanges in turn leased them to the theatres. Soon there commenced to be
- 4 tremendous competition between the theatres. Prior to that time, there had been no set day or set date for releasing the film. When the Vitagraph Company produced a story, we advertised it, and sold it as soon as we could get it on the market, and between 1900 and 1904, and 1905, the sales from any one story were liable to stretch over a period of two or three years. You might sell a lot of copies today, and you would sell some from that story the next month, and so on, the month after that, and until the next year. You were continually selling from them. But,

with the advent of so many theatres, there commenced to grow up a rivalry as to who could get the given story into their theatre the quickest, and so the managers of these theatres would make inducements to the managers of the exchanges, to get a certain subject before some competing theatre got it, and then they would get the bulk of the trade, and the manufacturers and the producers commenced to receive complaints from the theatres regarding the favoritism which was shown certain theatres, these complaints coming from competitors whose business was being injured by the fact that another man down in the same street, a block or two away, could get from the exchange in that town or vicinity, all of the pictures immediately on their release. The bulk of the patronage went to the theatre that had them first. There is a little something I want to bring in there, but I have forgotten it.

Mr. GROSVENOR: Something about the rental exchanges?

The Witness: Yes. In this connection.

I was going to explain that the man in the same street who was getting the worst of the service, whose competitors were getting their films first, could get no redress, because these exchanges had a sort of a working agreement amongst themselves, that if this man in this street was taking service from him, and could not get authorization from him, if he left him, he could not get service from another fellow in another town, and so he was obliged to stand in where he was, and see his competitor down the street getting the first run of the films. That was the start of the release day for films. The manufacturers realized that they must try and protect the exhibitors if they could, and so they commenced to set a regular release day for their films. They would announce that, say on Tuesday, December 24th, or such and such a date, such and such a film would be released, and every manufacturer adopted the same idea, because they saw that it was good. Then, because of the setting of the release day, there came another trouble. Prior to the advent of the release day on film, if a producer, because of the poor credit of an exchange, or because an exchange omitted to pay its bills,

- 1 was afraid to furnish the film to that exchange, he could hold the film back, and he might be able to sell it a week or two or three weeks, or a month later, but with the advent of the release day, the film had a certain specific value on the release day. The next day it was worth so much less, the next day so much less, and inside of a week or two weeks, it had practically no value at all. It had deteriorated to what they call "commercial," which was leased at any old price. So the manufacturer commenced to have large quantities of prints left on his hands which he could not dispose of. With the inauguration of
- 2 the release day, came the standing order. In order to be able to print a sufficient number of copies of a story to deliver on a certain specific day, the producer must know in advance how many copies he can deliver, so that he can have them printed and boxed, and shipped to their points of destination, so that they will all be released on the same day. And so it was necessary to have a standing order. And with the advent of the standing order, the producer had a number of prints on hand, and if, at the last minute, the exchange cancelled the order, the producer
- 3 was left with that print on his hands, which he had no market for, and which he could do nothing with. Or, if the exchange failed to pay for its film, the producer must either give the exchange its film and take a chance on getting his money, or else put it on the shelves, and there it stayed and rotted. The Vitagraph Company, at this date, had many thousands of feet on its shelves that were manufactured during the period that I speak of, and which they were unable to find a market for, because of the decrease in the value of the film after the release day. But the institution of the release date did not do away
- 4 with the trouble of one exchange favoring a theatre. And so those complaints from the theatres commenced to come in even more frequently than they had in the earlier days. And the competition between the various exchanges had so cut down the returns from the leasing of the films, that renters soon commenced to find that there was more money in having a theatre and showing the films themselves, than in leasing those films to a theatre owned by someone else, and so they would start a theatre in a street where they found it was profitable, and lease their own films to themselves, and so we commenced to have

untold complaints from the men who had gotten their money invested in theatres, but could not get, and did not have, an exchange license, and did not operate an exchange.

1

Mr. GROSVENOR: What period are you talking of when you say exchange licenses?

The Witness: Well, I have gotten down, now, to around 1906 and 1907, perhaps. Perhaps I should specify these dates, but I have been trying to follow along in my mind—

2

Mr. GROSVENOR: The only reason I asked the question was because you used the term, "exchange license," and I did not know that that term had been common prior to the formation of the Edison licensing arrangement.

The Witness: Well, no. I have got down, now, in my mind— You see, I am obliged to dig back here to think of all of these things, and I have got my mind back to the time of the licensees, and I am talking now of the business conditions as they existed around the latter part of 1907 and 1908.

3

By Mr. KINGSLEY:

Q. Will it refresh your memory to know that the license agreement with the Patents Company was entered into in the latter part of 1908?

Mr. GROSVENOR: And the Edison licensees' agreement in February, 1908.

4

The Witness: Well, I cannot be very specific as to dates. In the early years when we were struggling very hard, I could remember dates pretty well. Dates of years. But when we got down to the formation of the Edison licensees and the Patents Company, and we no longer were obliged to worry about litigation, we devoted most of our time to the production of pictures, and so, dates made very little

1 impression on our minds. But the time I am speaking of is after the formation of the licensed exchanges.

By Mr. KINGSLEY:

Q. You were speaking about the difficulties which the owners of theatres who did not own exchanges at that time, or had no interest in exchanges, experienced in competition with theatres which were owned wholly or partially by the owners of exchanges? A. Yes. Well, that was the context of many of the complaints that were coming in to 2 the Patents Company and to the manufacturers in regard to the condition of affairs as they existed at that time. And furthermore, there was no jurisdiction exercised over the furnishing of programs which would give different theatres in the same locality a chance to exist. I have seen, myself, in 14th Street where there have been as many as half a dozen theatres, each theatre showing the same film, each one trying to beat out the other. And that condition of affairs existed all over the country, and because of those complaints the manufacturers suggested amongst themselves that it might be a good idea to start a sample exchange. 3 And there was also talk at the time, of starting a theatre in New York City, wherein the exchange and exhibitor might be shown modern methods of releasing a program, and modern methods of exhibiting films. And, to the best of my recollection, Mr. George Kleine, who owned a number of exchanges throughout the country, was very much in favor of the idea, and offered to turn over to some company that should be formed, his exchanges to operate as model exchanges. So the General Film Company was formed, and while I had very little to do with the actual formation of the General Film Company, I do know that after its forma- 4 tion, offers from exchanges throughout the country to sell, were very numerous, most of them having discovered that there was more money in exhibiting the films than in renting them, and a great many of them sold their exchanges and went into the exhibition business, which business, I understand, they are engaged in today.

Q. Was it in contemplation, so far as you were concerned, at the time the General Film Company was formed, that the General Film Company would ultimately do practically all the exchange business in the United States? A. No, sir.

Q. Was it in contemplation, so far as you were concerned, or so far as others were concerned with whom you conversed, who were also interested in the formation of the General Film Company, that a large number of exchanges would be operated by the General Film Company? A. Well, I never understood that was the idea at the start. After many exchanges had been offered to us, everyone knew then that the General Film Company would be larger than they had thought at the commencement.

Q. At the time of the formation of the General Film Company, were there some of the licensees of the Patents Company who themselves owned and operated rental exchanges? A. Yes.

Q. How many exchanges did George Kleine own and operate? A. I don't remember how many.

Q. Several? A. There were several.

Q. Did your company own an exchange? A. We had one exchange, yes.

Q. Where was that located? A. In Nassau Street, New York.

Q. Did any other of the producers who became interested in the General Film Company as stockholders, own exchanges besides the two you have mentioned? A. Lubin of Philadelphia had, I think, two exchanges, and Spoor of Chicago, had one. Perhaps more. I am sure only of one.

Q. What was the name of the exchange in which your company was interested? A. It was called the Vitagraph exchange.

Q. And did the Vitagraph exchange sell to the General Film Company subsequently? A. Yes, sir.

Q. Was that a voluntary sale on the part of the Vitagraph Company, or the owners of the Vitagraph exchange? A. It was.

Q. In your testimony this afternoon, you have referred to the time when you were still struggling, referring to your business, and your business experiences. What did you mean by that, Mr. Smith? A. Well, in the early days of the business, we had a hard line to hoe, by which I mean that we were harassed by patent litigation which handicapped us greatly, and prevented us from developing the art as we thought it should be developed, and, I think, prevented a good many others also.

1 Q. When was it that this patent litigation gave you
 annoyance and expense and trouble? A. We started in busi-
 ness the latter part of 1896, and the early part of 1897, and
 I think it was in 1898 or thereabouts that the Edison Com-
 pany first sued us, and I don't remember the exact workings
 of the law at that time. I am not exactly a graybeard, and
 I was not an oldster at those times. All I do remember is
 that we were put under injunction, and we were advised by
 our lawyer—I think we were brought up at one time for
 contempt of court, and we were advised by our lawyer, who
 2 got us off on that occasion, that if we were brought up again,
 we were liable to be imprisoned.

Q. You say he got you off. Did he get you off with a fine?
 Is that what you mean? A. To the best of my recollec-
 tion, we paid a fine of \$250.

Q. About what time did this happen? A. That was—I
 think that was about 1901. Mr. Blackton and I were in
 business together in 1897 and 1898, and it was while we
 were thus associated that we were first sued by the Edison
 Company, and first put under injunction. In 1899 we be-
 came associated with Mr. Rock, and in 1900, the Vitagraph
 3 Company was incorporated, and we were sued again by the
 Edison Company, and it was pursuant to that suit—it was
 after that suit, or during that suit, that we were brought up
 for contempt.

Mr. GROSVENOR: I object to this as immaterial,
 the same having occurred, as testified to by the wit-
 ness, seven years before the Patents Company was
 organized.

By Mr. KINGSLEY:

4 Q. Will you tell us something more of your experiences
 in patent litigation after that time, after you were pun-
 ished for contempt? A. After that, we were obliged to be
 very careful. We made some sort of an agreement with the
 Edison Company, whereby we manufactured negatives
 which were taken over by the Edison Company, and from
 which they sold positive prints, and on which they paid us
 a royalty of so much on every fifty feet sold from those
 negatives. But that business not proving very profitable—

Mr. GROSVENOR: When was that?

The Witness: That was around 1901 and 1902. That condition not proving very profitable, we discontinued the manufacture of films entirely. At the time that I speak of, nothing had been made but very short-story films, running up to perhaps a couple of hundred feet, and very few of them. We discontinued manufacturing, ourselves, because it did not pay us to turn them over to the Edison Company, but we could not get along without using some infringing films. We were obliged to use foreign films, and so we were in daily terror of another suit from the Edison Company which might put us out of business. We did not know what it might not do to us. So one day in 1904, I think it was, I arrived at the office and Mr. Rock handed me a paper. It was a legal paper, and at first I thought it was another notice of violation of the injunction, that we were going to be brought up for contempt proceedings again. 1 2

Q. Was the injunction still in force at that time? A. So we understood. When we came to read this paper, we found out that it was notice of the beginning of a new suit. We could not understand that at all. And so we decided that I should take it down to a lawyer, and as we had not much faith in the man we had had before, we decided to go to Kerr, Page & Cooper, who, I think, were handling the case at that time for the Biograph Company, and I took the paper to Kerr, Page & Cooper, and they informed me that there had been a reissue of the patent, and that that reissue wiped out all the past injunctions, and that we were as free as anyone else to go ahead. And so we started in to manufacture again. 3

Q. That is, there had been a reissue of the film patent under which you had previously been enjoined? A. Well, a reissue of the patent. 4

Mr. GROSVENOR: I object to that statement. There is no testimony here that he had been enjoined under the film patent.

By Mr. KINGSLEY:

Q. Under which patent had you been enjoined, Mr. Smith? A. Well, I don't know. All I knew was that it was the Edison patent. So after this information, we com-

- 1 menced to make preparations for the manufacturing again. And meanwhile, the business had—the art had improved and progressed to such an extent that they were now making reels of the length of five and six and seven hundred feet.

Mr. GROSVENOR: You mean at the time you started to make films again, the art had progressed to that point?

- 2 The Witness: The art had progressed to that point.

By Mr. KINGSLEY:

- Q. What year did you say that was, Mr. Smith? A. Well, to the best of my recollection, it was in 1904 when we learned that we were free from the restraining influences of the old injunctions. I don't remember just how long it took us to digest that information and prepare to make stories again. I think it was in the latter part of 1905 when we made our first long story, which, I think, was the first one made, which lasted as long as a thousand feet. I
3 remember it was dramatized from "Raffles, the Amateur Cracksman" after a story by Hornung. And on the strength of the success we had with this story and a few others that followed it, we bought a small plot of ground over in Brooklyn, and we built thereon a small studio. We were afraid to invest very much money because of the troubles we had undergone before, and we did not know how things were going to come out in the future, and we figured we could not afford to lose much, in case we were closed down again. So we proceeded with the production of films for a
4 year or so, when we heard that a decision had been rendered in the Biograph case which stated that all of the cameras of the—

Mr. GROSVENOR: I object to what the witness may say that decision stated. The opinion is in evidence, introduced by the Government.

By Mr. KINGSLEY:

Q. Go ahead, Mr. Smith. A. Which stated that prac-

tically all types of cameras, with the exception of the Biograph camera, infringed on their patent. 1

Q. On whose patent? A. On the Edison Company's patent. So we took up this matter—

Mr. GROSVENOR: I object to that statement as being an inaccurate statement of what the opinion says.

Q. Is this an accurate statement of what you heard at that time? A. That is the mental impression I have today of what had occurred a number of years ago. 2

Q. You may proceed. A. We took up the matter with our attorneys, and we were led to believe from the information we received from them, that the Warwick, the Urban, the Lumiere, and all similar types of hook cameras were positive infringements, but there was a doubt as to whether the Gaumont-Demeny camera infringed, so we decided to pin our hopes on the Demeny camera, and we proceeded to make all of our negatives, using a Demeny camera, and we took great pains to prevent spies from coming into our studio, so that it would be very difficult for the Edison Company to get evidence to prove what type of camera we were using, and we felt very good over the situation, although one of the attorneys with whom we consulted, had told us by that time that he did not have much faith in the Demeny camera. So we redoubled our vigilance, and were more careful than ever that no one should get in the studio, but finally a man who was in the pay of the Edison Company, and who was acquainted with the superintendent of our factory, came down to visit us, and because of his acquaintance with our superintendent, he was admitted to the studio, and in the course of the conversation he saw the camera and became interested, and said that he knew nothing at all about the picture business, so our superintendent, not dreaming who he was, opened the camera, and showed him the film, and this man snipped a piece off of the film, and then we thought the jig was up. I think, on the strength of getting that piece of film, the Edison Company started to bang at us again, and I believe that amongst a conference of the attorneys, it was finally decided to pin the whole thing down on one side, 3 4

1 and the manufacturers all agreed to abide by that decision. And this time, instead of each one of us retaining
lawyers individually, we had realized that in unity there
was strength, and we got together and agreed to retain one
good firm of attorneys, and divide the expense of the fight
amongst ourselves. During all this conflict, while the business
was improving, the American manufacturers, including
ourselves, were afraid to increase our plant and studio
force, to keep pace with the business, and when those foreign
manufacturers, who were bringing their films over here,
2 Pathe, for instance, were getting the benefit largely of
the great growth of the art in this country.

Q. About what time was it that Edison started this
new suit, to which you have referred? A. I think it was
probably in the early part of 1907. Because I remember
we were very much perturbed and disturbed over the fact
that they had gotten this evidence, and shortly after that,
suggestions were made to us that if we could get together
with the Edison Company, and pay them a license, the
probability was that some sort of an agreement could be
reached, whereby we could proceed with our business in
3 a state of peace and security, with assurance that we
would be no further disturbed in the development of the
art, and the investment of our money.

Q. This was some time in 1907 that this suggestion was
made to you? A. In 1907.

Q. And did you act on this suggestion subsequently?
A. Well, there were various meetings, which finally led
to the formation of the Edison licensees, that is, each manu-
facturer, individually, took a license from the Edison
Company, and agreed to pay them half a cent a foot, al-
though I do not mind telling them now, if they had in-
4 sisted on a cent a foot at the time, they would have
got it.

Q. The Vitagraph Company was one of the companies
which became an Edison licensee, as I understand it? A.
Yes, sir.

Q. Now, Mr. Smith, did you, after becoming an Edison
licensee, go ahead with your business then, on lines of
development, and additional investment? A. Yes, sir, we
immediately doubled the capacity of our studio.

Q. Do you remember what the capacity of your studio

was, before you took out the Edison license? A. It was 1
less than one subject per week.

Q. And after that, it was doubled, you say? A. We
doubled it.

Q. You have spoken of the foreign films that were coming
into this country about the time that you became an Edison
licensee. What would you say of the importation of foreign
films with reference to its volume at that time? Were the
importations large or small? A. Large.

Q. Did the foreign producers of motion pictures make
large sales in this country at that time? A. Yes, sir.

Q. Who was the largest individual producer of motion 2
pictures who was sending them to this country at that
time? A. Pathe Freres.

Q. What would you say of their business in this
country, in comparison to the business of any other indi-
vidual producer? Was it larger or smaller at that time?
A. A great deal larger.

Q. That is to say, the foreign manufacturing house of
Pathe Freres had a larger business in this country than
any American producer at that time? A. More than twice
as large.

Q. As any other? A. Than any other American pro- 3
ducer.

Q. Did you participate in any discussions after you
became an Edison licensee, with reference to becoming a
licensee of the Motion Picture Patents Company? A. Yes.

Q. Did the Vitagraph Company subsequently take a
license from the Motion Picture Patents Company? A.
Yes, sir.

Q. Did the Vitagraph Company, in taking a license
from the Motion Picture Patents Company, assign to it
any property or patents of any sort? A. It made a con- 4
tract with the Patents Company, whereby it turned over
to the Patents Company, its patents on projecting ma-
chines, for which it was paid royalty.

Q. Do you recall what patents you turned over? A.
There was a patent on a flame shield.

Q. Was that a safety device? A. A safety device on the
gate of the projecting machine to prevent the film from
catching fire. There was a friction take-up or rewind for
the film after it was run into the cartridge box, which was

1 adjustable while the machine was running, and the setting device.

Q. What is the setting device? A. In the early history of the business, one of the most serious handicaps and one of the troubles that caused the greatest objection to viewing an exhibition, were the frequent jumps that the films would make from the sprocket wheels while the film was being exhibited. It ran through the machine at a high rate of speed, and perhaps because of a poor joint, or because the film was a little bit worn, or because the sprocket hole was slightly broken, or because the machine was a little out of adjustment, the film would jump in the middle of the show, so that instead of seeing one picture on the sheet, you would see the upper half of the one and the lower half of another. That necessitated the operator shutting off the light, closing down the show, opening his gate, and readjusting the film, which took anywhere from ten seconds to two minutes, according to the skill or clumsiness of the operator, and when Mr. Blackton and myself first became interested in the business while traveling around, we found that was one of the greatest objections to the exhibition of the moving pictures. So I foresaw that if we could do something to the machine that would prevent that happening, or would permit us to take care of it, we could give a much better exhibition than anyone else, and I remember it was on a train coming in from Berea, Ohio, that I figured out in my mind the device for attaching the mechanism which would permit the film to be adjusted on the sheet after it had jumped in the machine, and as soon as I reached New York, I went to a machinist—we had no machine shop of our own at that time—and I had him build me this attachment which we fitted to one of our machines, and first exhibited at a theatre in Fall River, and the improvement was so great that we at once adapted it to all of our machines, and that was one of the principal reasons why the Vitagraph Company was able to build up such a large business and in such a short space of time, because of the superior exhibition they were able to give by reason of this device which I first built in 1898.

Q. So that you consider that this improvement on the projecting machine had great potency and value in building up this business afterwards? A. Yes, sir.

Q. Is this a device or invention which you speak of as a setting device, sometimes known as a framing device? A. Framing device, yes. I think it is generally dubbed the framing device now. I always call it the setting device.

Q. Does the Vitagraph Company manufacture projecting machines now? A. No, sir.

Q. Do you know the numbers of the patents on that device? A. No.

Mr. GROSVENOR: Was that the most important of your patents, the one you have named?

The Witness: Yes, sir; I so considered it.

By Mr. KINGSLEY:

Q. Did the Vitagraph Company ever manufacture projecting machines? A. Yes.

Q. Did you manufacture them for sale in the market? A. No, sir.

Q. What did you do with them? A. Leased them.

Q. When you leased machines, did you send an operator with them, usually, in the old days? A. In the old days, yes.

Q. Did you subsequently lease machines without an operator? A. Yes, sir.

Q. Why did you discontinue the manufacture of projecting machines? A. It took all my energy to produce pictures, and I was the mechanical end of the concern; I had no energy left to devote to further perfecting the projecting machine.

Q. And had it become a small and inconsiderable part of your business in comparison with the making of motion pictures? A. Yes.

Q. You gave all your time to making motion pictures? A. The production of pictures.

Q. Do you recall the time when the Vitagraph Company entered into the license agreement with the Motion Picture Patents Company? A. You mean do I recall the date?

Q. Yes. A. No, sir.

Q. Well, the date was the 18th day of December, 1908. Do you recall the occasion when the Vitagraph Company executed the license agreement with the Motion Picture

1 Patents Company? I don't mean by that the date, I mean do you recall the occasion and the surrounding circumstances, or some of them? A. I remember that we executed it.

Q. Do you remember where it was you executed this agreement? A. I think it was in the Edison building. I think it is No. 10 Fifth Avenue.

Q. Were there other producers of motion pictures present at that time? A. Yes, sir.

Q. And most of the other ones who became licensees? A. Yes, I should imagine that they were all there.

2 Q. Do you remember, Mr. Smith, that on the 18th day of December, 1908, the date on which the Vitagraph Company executed the license agreement with the Motion Picture Patents Company, that at the gathering of the manufacturers who came there to execute similar licenses, there was an individual present named Lodge, who was a witness in this case? A. I remember there was a Mr. Lodge present on one occasion.

Q. On that occasion did you have any discussion with Mr. Lodge respecting the possible formation of a rental exchange on the part of the licensees who were that day executing a license agreement with the Motion Picture Patents Company? A. No, sir.

Q. Did you have any conversation with any other producer of motion pictures on that day with respect to the possibility of forming a rental exchange, in which they should be stockholders? A. No, sir.

Q. Did you hear any conversation between the witness Lodge and any other producer of motion pictures who was present on that day, with respect to the possible or prospective formation of a rental exchange which should be owned by the new licensees of the Motion Picture Patents Company? A. I did not.

Q. Do you recall ever being present after that occasion at any meeting of the producers of motion pictures at which the witness Lodge was also present? A. I do not.

Q. At the meeting of December 18th, 1908, when the producers of motion pictures entered into the license agreement with the Motion Picture Patents Company, was there any discussion in which you participated, or any discussion which you overheard, to the effect that it was the

intention of those present, or the company which was to license them, to raise a gigantic fund for litigation? A. I never heard of any such talk or expressions. 1

Q. Did you participate in any such discussion? A. No, sir.

Q. So far as your observation went, and your knowledge of the attitude of the producers of motion pictures at the time, were they willing or reluctant to enter into the formation of the General Film Company?

Mr. GROSVENOR: I object to that question as improperly framed, and also immaterial. 2

The Witness: I think there was a feeling of unrest over it.

Mr. GROSVENOR: You mean a feeling of unrest among the exchanges, or among the manufacturers?

The Witness: Amongst the manufacturers and producers.

By Mr. KINGSLEY: 3

Q. In what respect, Mr. Smith? A. Well, they felt disinclined to go into it.

Q. Did you go into it with the expectation of large profits to follow? A. No, sir.

Q. Did the other stockholders of the company, so far as you understood, go into it with the expectation that large profits would follow? A. No, I think the main idea that was in most of their minds was that their bills would be paid.

Q. Going back to the 13th day of November, 1911, on the occasion when the producers of motion pictures met and voted to recommend to the Patents Company that the license of the Greater New York Film Rental Company be cancelled, were you influenced in your action, in any degree, by the prospect that the General Film Company might more readily purchase the Greater New York Film Rental Company, in the event of the cancellation of its license? A. No. Personally, I was opposed to the cancellation of the license. 4

1 Q. Did you, as a matter of fact, know at that time, that there had been any negotiations between Mr. Fox and Mr. Kennedy? A. To the best of my recollection, I did not.

Q. Were you a Director of the General Film Company in 1910 and 1911? A. Yes.

2 Q. Did you, as a Director of the General Film Company, in the year 1910, and the year 1911, at any time, either directly or indirectly, attempt to influence or induce the Motion Picture Patents Company or its representatives, to cancel the license of any rental exchange, for the purpose of aiding the General Film Company to acquire the same? A. I did not.

Q. Did the General Film Company, in any way control the course, of, or the official action of, the Motion Picture Patents Company? A. It did not.

Q. Did the Motion Picture Patents Company, at any time after the formation of the General Film Company, collusively cancel the license of a rental exchange, in order that the General Film Company might more readily and easily purchase it? A. No, sir.

3 Mr. GROSVENOR: I object to the last question.

By Mr. KINGSLEY:

Q. In the rental exchange agreement between the Motion Picture Patents Company and the rental exchanges, there is a clause providing for the return of motion pictures after six months. In your judgment, as a producer of motion pictures, and one interested in the development of the art, is that a desirable condition? A. Very desirable.

4 Q. Will you give us the reasons for believing that that condition should be imposed in the license agreements? A. Because every time the positive film is run through a machine, there are more or less scratches made on it by the apparatus for moving the film forward, and by dust and dirt that may accumulate on and in that apparatus, so that after a certain number of exhibitions, the film becomes so badly scratched and lined up, that the public, who do not know the cause of the effect on the sheet, ask why it is, or they used to ask, and they do ask now, in relation to old films, "Why is it that they have that peculiar rain effect on the picture?" It makes a very poor exhibition,

and one that tends to disgust people who are interested in the art, and consequently to hold it back and prevent it from being developed as it would develop in its normal condition. 1

Q. You have spoken of dirt and scratches as diminishing the value and artistic excellence of the film. Is there some mechanical destruction of it also, at the same time? A. Yes. The film is run through the machine at a high rate of speed, a thousand feet of film running through the machine in less than twenty minutes. It runs through at the rate of one foot every second, and running through at that high rate of speed, the relatively soft edges of the holes perforated in the film by which the sprocket wheel engages and carries the film through, becomes very badly worn, so that whereas, where a film is brand new it will stand on the sheet "rock steady," to use a professional term, after it has been exhibited several dozen times, it commences to lose that rock steadiness, and then with each succeeding exhibition, it will become more and more unsteady on the sheet, until, after being used for a number of months, the unsteadiness is so bad as to be liable to injure the eyesight. 2

Q. In other words, the sharp delineation of the picture on the screen is gradually obscured and blurred? A. It is lefogged. 3

Q. Mr. Smith, do you keep in touch with the progress of the business so far as you can? A. As closely as possible.

Q. Do you devote all of your time to it? A. Practically all of my time.

Q. Are you at the Vitagraph Company's studio and plant practically every day of the year? A. Practically every day, except with very reasonable vacation.

Q. Can you tell us something about the extent and quality of the competition now existing between the licensed producers and importers of motion pictures? A. The competition between all the producers is very keen, each one striving for mechanical and photographic excellence, in addition to their endeavors to try and put out a very high type of story, and to tell a story on the sheet in such fashion that it shall be very easily understood by the spectator, there being a great difference between a play presented by actors and actresses, and a picture presented by a photographic representation, on account of the inability of the still char- 4

- 1 actors to speak. And so it is necessary in a picture, if a picture is made from a play, to take the lines of that play and visualize the lines—something that on the stage, for instance, one of the characters may refer to by conversation—we must show in a picture. So that it necessitates a very keen insight and comprehensive knowledge of the art, which has been developed by very few people, in order to present high-class pictures on the sheet. I can best illustrate that by showing what has happened between the Vitagraph Company and the Melies Company, in which the Vitagraph Company is interested. The Vitagraph Company,
- 2 from the time that our legal annoyances ceased, has steadily progressed, not alone in this country, but all over the world, it being generally known that at the present time, in Europe, where competitive conditions prevail to the greatest extent, that the Vitagraph Company disposes of more of its product than any other manufacturer in Europe. Several years ago the Melies Company, because of the inferiority of their pictures, had so fallen down in the scale, that from selling 100 prints of a good production, they had, to my positive knowledge, reached a point where they only sold one, and at
- 3 this period in its history, it made application to the Patents Company for permission for Mr. Blackton and myself to associate ourselves with the company, Mr. Melies' words before the licensees and officers of the Patents Company being that he did not need financial assistance as much as he needed the assistance of someone who had a very intimate knowledge of the production of film stories. Mr. Blackton and myself were given permission to associate ourselves with Gaston Melies in a small way. We must not actively participate. We could superintend their scenarios, and assist in that way, and while those scenarios were under our jurisdiction, and while the pictures were submitted to us for the
- 4 benefits of our editing, the Melies Company's business grew to quite an appreciable extent. I think they reached the point where they sold 50 or 60 copies of their productions again. After we had been associated with Gaston Melies for a year or more, he became imbued with the idea that he had assimilated from Mr. Blackton and myself all of the knowledge that we had and he thought he could produce pictures as good as we could, and so he discontinued taking our advice, and went to California to produce pictures entirely on his own initiative, against our advice, and against

the policy that we would have advised him to adopt, with the consequence that the Melies Company's business is now down to zero. 1

Mr. GROSVENOR: I object to all this last answer as while no doubt a high testimonial to the witness' ability, it has no bearing upon the issues of this case.

The Witness: The witness' ability is known in the trade, sir.

By Mr. KINGSLEY: 2

Q. Has the Vitagraph Company made large additional investments in its plant in the last few years? A. Yes. We have increased and developed our plant, so that now it has a capacity of ten times—at least ten times the amount of the output at the time we took the license from the Edison Company.

Q. Do you keep a large company of actors at the studio?

A. Our stock company runs up close to 150 members.

Q. Do you keep them there most of the time? A. Practically all of the time. 3

Q. Do you know whether the importations of the foreign motion pictures have fallen off since the first of January, 1908, in the aggregate? A. Yes, sir; they have.

Q. Do you know to what extent they have fallen off?

A. I could not give the figures in round numbers, but I do know that at the time you mention, the Pathe Company sold probably three or four times the amount of film that the Vitagraph Company sold or leased, and that now the Vitagraph Company leases in this country and abroad considerably more than does the Pathe Company.

Q. Do you know whether the Pathe Company's aggregate importations have fallen off or stood still? A. Mr. Berst 4
has told me several times that the demand for their foreign product has fallen off considerably, and on this account he established a studio in this country and made films here.

Q. In 1908, were you exporting any considerable quantity of motion pictures? A. A relatively small amount of our product.

Q. Since that time have you increased importation? A. Since that time our capacity abroad has increased so that

1 at about this time we dispose of, in Europe, about twice as much as—more than twice as much as we dispose of in this country.

Q. In what countries do you dispose of most of the pictures abroad? A. We sell to all the world.

Q. Do you sell to South America? A. South America.

Q. Australia? A. Australia. Russia. We have an office in London and an office in Paris. We have agencies in Berlin, Barcelona, Milan, Budapest, Buenos Aires, Rio Janeiro, South Africa, and Australia.

2 Q. In the present condition of the motion picture art, upon what does the manufacturers' success depend? A. First upon a good story. On the merit of the story. Second, on the merit of the production, which means the cleverness with which the story is told in pictures, so as to make it understandable to the spectator. Thirdly, upon the acting or interpretation by the actors and actresses of their different parts, and, last, upon its mechanical excellence from a photographic and mechanical standpoint.

3 Q. What is a scenario? A. A scenario is practically a play. It is a moving picture play. It is very similar to a manuscript, such as is written for a play, such as is produced upon the stage.

Q. Are you constantly on the lookout to obtain good scenarios? A. We are always in the market for the best that can be bought, at any price.

4 Q. What range of prices is covered in purchasing scenarios? A. The prices run from \$10 to \$10,000. When it gets up into those figures, there is usually an arrangement made on a royalty basis, whereby the owner of the play or of the book, as is the case with us, in the arrangements we have made with Hall Caine, the writer of "The Christian"—there is a royalty basis of so much from all the money earned in the theatre by the exhibition of the picture.

Q. Do you recall the names of some prominent authors whose books, novels, works or plays, have been adapted to the motion picture art within the last year? A. We are now making "The Christian," by Hall Caine. "Mr. Barnes of New York," by Archibald Claverling Gunter. We have made stories from the pen of George Randolph Chester, the writer of the "Get-Rich-Quick Wallingford" stories, and

numberless others, whose names I do not recall at this moment. 1

Q. Have you recently made any large expenditure in connection with the production of motion picture specialties, or a motion picture specialty? A. We are all the time expending large sums of money. For one picture, we purchased two engines from the Pennsylvania Railroad on Long Island, transported them with cars, on a flat car, to a disused railroad, which we leased over in Jersey, and smashed the engines together, merely to get a single effect, which takes thirty or forty seconds in the picture, and which cost us from twenty to thirty thousand dollars. We smashed two yachts together to get a collision effect. We smashed two aeroplanes together in the making of a war story, showing the usages of aeroplanes, and other things, in war times. 2

Mr. GROSVENOR: Was there anybody in the aeroplanes?

The Witness: Yes, sir. There was a dummy in the aeroplane. The man who played the star part for us, offered to stay in the aeroplane when it dropped, but we were afraid to take a chance. He was not. 3

By Mr. KINGSLEY:

Q. Has it been your experience since entering into the Edison license agreement, and since becoming a licensee of the Motion Picture Patents Company, that the license agreement tended to any limitation of output? A. No, sir.

Q. Has it been your experience since that time, that the license agreement tended to a restriction of prices? A. I think the license agreement specified the prices at which the films should be leased. 4

Q. And was that a minimum price? A. A minimum, yes. I think it was a minimum.

Q. Was there any restriction against the higher price than that set out in the license agreement? A. Oh, no. But we have received higher prices.

Q. Has it been your experience that since that time, the license agreement tended to prevent or eliminate com-

1 petition between you and other licensed producers? A. No, sir, there was the keenest of competition at all times.

Q. What would you say as to the quality of foreign pictures at the time of the formation of the Patents Company? A. The foreign pictures were superior to the domestic.

Mr. GROSVENOR: In spite of all of these patents?

2 The Witness: It was the patents that had held us back.

By Mr. KINGSLEY:

Q. Since the beginning of 1908, when you entered into the license agreement, and when you entered into the Edison license agreement, continuing down past the time when you entered into the license agreement with the Motion Picture Patents Company, has the number of negatives turned out by your plant increased or diminished? A. Increased largely.

3 Q. And by that I mean negatives of motion picture plays. A. Yes, sir.

4 Q. How large an increase would you say had taken place at your plant since you entered into the license agreement? A. At the time we were entering into the license agreements, I think we were putting out about two subjects a week that might run in most cases, from a thousand to two thousand feet, to the best of my recollection. At the time we entered into the license agreement, we had not yet arrived at that condition where we endeavored to make each subject a thousand feet in length. We were not particular about the length of the subject, as long as it was well inside of a thousand feet, whereas, at the present time, in our studios, we turn out—we have ten directors working in Brooklyn and four directors working in Santa Monica, California. I think we never turn out less than twelve thousand feet per week.

Q. By that do you mean twelve thousand feet of negatives? A. Twelve thousand feet of finished negatives. To make that twelve thousand feet of finished negatives, means making about thirty thousand feet in the initial stage.

Q. How many plays does that mean, roughly speaking?

A. Well, roughly speaking, it might run into six or seven plays. Some would be single reels, some would be two reels, or two thousand feet, to tell the story, and up to four or five and six thousand feet, to tell a story. 1

Q. Do I understand you to say that twelve thousand feet of finished negatives might mean thirty thousand feet of original negatives? A. Yes, sir.

Q. You mean by that that you cut out and destroy a large percentage of the original negative? A. It is quite common for a story when it is first finished by the directors, to run as long as twenty-four or twenty-five hundred feet, which is trimmed and trimmed, and trimmed, until it gets down to about a thousand feet in length. 2

Q. Are scenes sometimes cut out? A. Sometimes we will cut out a scene bodily.

Q. Sometimes do you shorten it? A. Shorten it.

Q. Sometimes do you have it acted over? A. Very often we are compelled to do a scene over again. That is a part of our daily routine.

Q. Now, you say that at the present time, your product is twelve thousand feet of finished negatives. How many feet of finished negatives were you turning out at about the beginning of 1909? A. Oh, it might be around three thousand feet. 3

Q. What is the total number of prints in this country that you are turning out? A. It runs well up over 300,000 feet.

Q. What was the footage about January 1st, 1909? I am confining these questions to this country, you know? A. Yes. Well, it might be up around a hundred to a hundred and fifty thousand feet a week, probably about half or a little less than half of our present output.

Q. So that, although you have increased the footage of finished negatives four hundred per cent. since that time, you have only increased the footage of positives about a hundred per cent.? A. Yes, the distribution from a given subject has dropped off considerably. In the early days it was nothing unusual to sell as many as a hundred prints from a negative, whereas, now it really goes to about forty. 4

Q. Well, what is the fact with respect to the cost per foot of finished negatives now compared with the cost per foot of finished negatives at your plant about January 1,

1 1909? A. Oh, it is treble or quadruple today. It has increased three or four or five times as much.

Q. So that, at the present time in your plant the cost of finished negatives has increased about four hundred per cent? A. Yes.

Q. And the amount of finished negatives has increased about four hundred per cent? A. Yes.

Q. And yet you have an increase in the total finished positives of only about one hundred per cent.? A. Yes, sir.

Q. Do you get a higher price now than you did then?

2 A. The price is about the same generally, except for some special subjects we get more money.

Q. What is the proportion of special subjects? A. Very slight.

Q. Is it relatively large or small? A. Small.

Q. Did the Vitagraph Company, or its stockholders, have anything to do with the formation of the Motion Picture Patents Company? A. No, sir.

3 Q. Since the formation of the General Film Company, what is the fact respecting the Vitagraph Company's profits after considering all dividends, are they less or greater than they were before? A. On account of the increased cost of negatives our profits are diminishing.

Q. Have you had occasion in connection with your motion picture interests to go about the country, and in going about the country to examine the conditions in various localities with respect to the growth of the unlicensed motion picture business? A. I travel generally every year to California, and while there, and while en route, investigate conditions as far as I possibly can.

4 Q. Do you know whether the unlicensed exchanges lease or buy their films from the unlicensed producers? A. Some of them buy them, and some of them lease them.

The Examiner: The hearings are adjourned until 10:30 o'clock A. M., Tuesday, November 18th, 1913, to be resumed at Room 159, Manhattan Hotel, New York City.

IN THE

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DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, Petitioner,	No. 889.
<i>v.</i>	
MOTION PICTURE PATENTS CO. and others, Defendants.	Sept. Sess., 1912.

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NEW YORK CITY, November 18, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 18, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

Messrs. J. H. CALDWELL and H. K. STOCKTON, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst. 4

Mr. HENRY MELVILLE, attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

1 Thereupon ALBERT E. SMITH resumed the stand.

Examination continued by Mr. KINGSLEY:

Q. Did you tell us Friday what was the average life of a motion picture in actual use? A. I don't think I did.

Q. What is the average life of such a picture? A. Around six months.

Q. Is it necessary in the motion picture art to have rental exchanges? A. I think so.

2 Q. Have you had occasion to notice how the motion picture business is advertised by various producers? A. Well, I think, without exception, they advertise in all the trade papers that are going.

Q. What else do they do? A. And they circularize the exchanges and the exhibitors in booklets, pamphlets, and sheets giving descriptions and explanations of the productions they are releasing.

Q. Do they prepare posters for the exchanges? A. Yes, all sizes of posters from a four sheet up to twenty-four sheet stand.

3 Q. Is it your judgment that there is active and vigorous competition among the licensed producers of motion pictures? A. Very keen and very vigorous competition at all times, each one doing his utmost to beat out his competitor in every sense of the word.

Q. Now the question I asked you related only to the present time. Has this competition been vigorous and active for several years past? A. As long as I have been interested in the art.

Q. At the time of the existence of the Edison license agreement, was there active competition among the Edison licensees? A. Yes, sir.

4 Q. And, after the signing of the agreement with the Motion Picture Patents Company, did this competition continue? A. The competition continued without diminishing at all times.

Q. After the formation of the General Film Company was there any cessation of this competition? A. No, sir.

Q. Friday, if I recall correctly, you stated that the Vitagraph Company, in spite of the fact that it had been receiving and had been credited with some dividends by the General Film Company, was not making any more money

than prior to the formation of the General Film Company, owing to the increased cost of negatives. Was that your testimony, Friday? A. Yes, sir. The Vitagraph Company is making no money in this country today, whereas, it did make money in this country before the formation of the General Film Company. 1

Q. What was the occasion for the increased cost of negatives? A. Increased competition.

Q. Did you find that the requirements of the General Film Company made it necessary for you to make more negatives? A. Well, I think it was the development of the art generally as much as anything else. 2

Q. You would not attribute it to any one specific reason? A. No, I don't know that I could pin it down to any one thing. We improved in our methods and knowledge as to what the public wanted, and as we were able to increase our output, we increased it.

Q. Now, isn't it true that the increase in the number of releases put out by each manufacturer was, to a large extent, induced by the requests of the General Film Company? A. Well, of course, if the General Film Company had not needed those new subjects we would not have made them. 3

Q. What is the proportion of motion pictures, so far as your observation goes, with respect to dramatic and scenic productions? A. I should think perhaps there may be sixty per cent. dramatic, about thirty per cent. comedy, and barely ten per cent. scenic.

Q. Just what do you mean by "comedy?" A. A comedy is a light humorous story, told in such a way that, instead of working up one's feelings from a dramatic standpoint, from some intense situation, the audience is interested and pleased, and pleased from a humorous standpoint, so that it may smile, or it may laugh, or it may have a jolly good time, from a situation, or from a series of situations that are brought about in the story. 4

Q. But, aside from its humorous characteristics, a comedy play is dramatic, is it not? A. Yes, I suppose you might use the word "dramatic," although in producing pictures when we use the word "dramatic" we usually refer to a strong situation, and not a comedy situation.

Q. But comedy situations have to be arranged, and

1 staged, and planned, do they not? A. Yes, sir. A comedy is more difficult to stage than a drama. The demand for comedy is greater than the demand for dramas, but because of the difficulty of staging them, we are only able to make about one-half the number of comedies that we do of the dramas—melodramas.

Q. In other words, a comedy is a play? A. You might say a play, yes, sir.

Q. From your observation what is the principal use of motion pictures, amusement, instruction or education? A. Amusement.

2 Q. And to what extent, and you may indicate that by terms of proportion or percentage, has the Vitagraph Company increased its plant and its business since it became an Edison licensee, and on down during the time it has been a Patents Company licensee? A. When we first became a licensee of the Edison Company we had one director working. That meant one little company producing pictures. At the time we became a licensee of the Motion Picture Patents Company we had about three directors working, and that meant three little or three small stock companies producing pictures. At the present time we have fifteen or sixteen directors working for us, and our stock company runs from one hundred and twenty-five to two hundred people permanently engaged, and our fluctuating company—those who may be engaged for a day or a week—would probably run up into three hundred or more people.

3 Q. Have you increased your plant, the number of your buildings? A. We started with one studio. That was before we were a licensee of the Edison Company. When our troubles with the Edison Company were straightened out we doubled our plant—we built a duplicate of our first studio, and some-
4 time after we had become a licensee of the Motion Picture Patents Company, we again doubled that plant, making four studios, and we have since that time built another large studio, the area of which is greater than the combined area of the four preceding studios. That is not including our plant in California. I am speaking now of our Brooklyn plant. In California we have four directors working.

Q. Did you have any California plant at the time you became an Edison licensee? A. No, sir; that was after the

formation of the General Film Company when we started our California studio. 1

Q. And you run that in conjunction with the Vitagraph Company's business in Brooklyn? A. Yes, sir.

Q. Do you recall that a former licensed exchange man named Boone, who was at one time connected with the Theatre Film Supply Company, and the Birmingham Film Supply Company, in Birmingham, Alabama, left some of his stock in the possession of the General Film Company? A. That stock was held as collateral for a loan for money advanced to Mr. Boone, and after that loan had been satisfied the stock was returned to Mr. Boone. 2

Q. Was that the reason that Mr. Boone did not receive his stock, because it was held as collateral? A. Yes; held as collateral.

Q. Was there any other reason why he could not have had his stock any time that he wanted it? A. No, sir.

Q. In taking interesting and valuable scenic pictures, does clever photography play any part? A. The photography is eight-tenths of the success of the picture.

Q. And by that you mean that the operator of the camera must be a man of good judgment and artistic perception and skill? A. Yes, sir; he must be both, and have a thorough knowledge of what is necessary in the line of scenic pictures that will please the average audiences. 3

Q. Well, is clever and artistic photography also an essential in making an ordinary dramatic motion picture and a comedy motion picture? A. It is a most important asset, because all of the work of everyone else engaged in the production would be nullified if the photography was poor. Oftentimes, where some accident has happened that has made a few scenes in a dramatic, or comedy, production poor, or because of some reason we have been unable to take those scenes well, why, that picture would be injured to a considerable extent because of the poor photography of some of the scenes. 4

Q. Are you, as a producer of motion pictures, in the market for novel plays and novel scenes? A. Yes, at all times.

Q. And do you maintain a department for the purpose of passing upon productions that may be offered to you in scenario form? A. Yes, sir; we have a department that we call our manuscript department. We have submitted to us, on an average, about one hundred scenarios a day. These

1 scenarios go to the first readers, who weed out all of the poorest material, and what they leave is passed upon by more skilful readers; and then, after they are finally gone over and weeded out again, they are passed to Mr. Blackton and myself, who either accept or reject them, and specify what price shall be paid for the scenario accepted.

Q. Do you pay large prices occasionally for scenarios?

A. We pay from ten dollars to ten thousand dollars.

Q. Do you copyright any of your motion pictures? A. We copyright every picture.

2 Q. How long have you been doing this? A. Off and on for a number of years.

Q. What would you say regarding the dependence of the business for its success upon the novelty and originality of the subjects embodied in the scenarios, and the development of the scenarios by the photographic art and the perfection of the reproduction? A. While novelty counts to a certain extent, it is the perfection with which the story is told which we have found counts more than anything else. One company will turn out a good story poorly told, and they will not have nearly the success that another company will have with a poor story well told. The Vitagraph Company has achieved quite a reputation amongst the fans, motion picture fans, for its method of telling the most simple story in such a charming and delightful way that it gives pleasure to the average audience.

3 Q. Now, just what do you mean by "motion picture fans"? A. Well, there is a certain class of people in this country, and for that matter in all countries, that are greatly interested in motion pictures, as, for instance, we would say in the same way some people are interested in football games as football fans, or in baseball, as baseball fans—

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Mr. GROSVENOR: Or in dime novels?

The Witness: Usually boys are interested in dime novels, whereas I refer to grown up people. I know of many grown up people who have arrived at, or even past what is termed years of discretion, who spend their time running from theatre to theatre to see motion pictures, not alone on account of the picture itself, but because they are specially interested in the work of a certain company, and are interested in the work of certain people who are employed by a certain com-

pany, in the work of certain actors, and those we term "fans." 1

Q. You find, then, that among motion picture audiences certain actors have made and established reputations? A. Yes, sir.

Q. Do you find that their work is looked for and sought after by those audiences? A. We find that it is looked for and sought after, and people will pay admission to see a picture which a certain actor is in, that might not pay the admission if that actor was not in the picture, and that is the reason we pay a great deal more money to some actors and actresses than to others. 2

Q. Then the reason for some of these high salaries to actors and actresses is primarily because of their excellent work, and thereafter because of the reputation they have already attained? A. The popularity they have achieved because of their good work in the pictures.

Q. Are the different producers also competing for the services of actors who have established reputations among motion picture audiences? A. Yes, at all times.

Q. And, of course, that has some effect on the salaries? A. Yes. 3

Q. With respect to the quality of motion pictures, would you say that it has improved or diminished in the past four or five years? A. Improved greatly.

Q. When was it, if at all, that the independent producers began to compete actively with you in respect to hiring away your skilled people? A. The earliest recollection I have definitely of it is in 1909, when the Imp people, and the Pantograph Corporation, each took away from our company members from every department, enough to start their business.

Q. How many unlicensed producers of motion pictures are in this country today of whom you know, and who are producing in large quantities? A. Between thirty and forty. 4

Q. How large a number of reels of unlicensed pictures are released at the present time, and I mean by that, approximately how many? A. About one hundred.

Q. Who is at the head of the Imp Company, to which you have referred as having competed actively with you for employees in 1909? A. Carl Laemmle.

Q. Is that the Carl Laemmle who was at one time a

1 licensee of the Motion Picture Patents Company? A. Yes, sir.

Q. Was he an exchange man? A. Yes.

Q. Do you recall when Laemmle first advertised a regular program of unlicensed film? A. In 1909.

Q. Do you know about what time of the year that was? A. I think it was in the Summer of 1909 that I first saw his advertisement calling attention to the fact that there had been an association or company formed that was furnishing an independent program to anyone.

2 Q. Were you a member of the Executive Committee of the General Film Company in 1910? A. I was a member of the Executive Committee the first year, I think, that the General Film Company was started, but I don't remember the year.

Q. Did you, as a member of the Executive Committee of the General Film Company, have any active duties to perform in connection with the purchase of any of the licensed rental exchanges such as were acquired by the General Film Company? A. No, sir.

3 Q. As a producer of motion pictures, did you have occasion to know anything about the practice of rental exchanges which owned theatres or an interest in theatres, with respect to discriminating in favor of their own houses? A. Those were complaints that were made to the Patents Company, and to the General Film Company.

Q. Complaints to the effect that the owners— A. To the effect that the owners of exchanges owned theatres, and that they favored their own theatres to the detriment and injury of theatre owners who did not own exchanges.

4 Q. In what respect would they favor their own theatres? A. They would use the early runs of the pictures, the first runs, and second runs, for their own theatres. This, of course, would compel the theatres not connected with the theatres owned by the rental exchanges, to run the service at a subsequent or later date. They would thus lose the attendance of the "fans" referred to earlier.

Q. Do you recall whether any complaints were received, or whether you received any complaints as to the failure of exchanges to furnish satisfactory service to the exhibitors, with respect to the age of the motion pictures? A. I cannot remember the phraseology of the complaints at the time.

Q. But you do recall such complaints were received? A. I recall such complaints were received. 1

Q. Did you have anything to do with the preparation of any schedule, or alleged schedule of prices, to be paid for the purchase of exchanges? A. No, sir.

Q. Was there any agreement or understanding between the producers of motion pictures by which each was to contribute only a given number of new subjects weekly, or otherwise, to the licensed program? A. No, sir.

Q. Were the producers of motion pictures free to contribute as many pictures as they saw fit? A. Free to release just as many as they saw fit. 2

Q. In point of fact, is it not true that each manufacturer, or many of them, increased the number of reels from time to time? A. Each manufacturer increased his program whenever he felt able to do so. When the Vitagraph Company first became a licensee, we were releasing about two subjects per week, and we added releases one at a time, from time to time, until now, our regular releases are six single reels and one double reel each week, and in addition to that, whenever we are able, we release special subjects that may run two, three, four or five reels. 3

Q. Just what do you mean by "special subjects"? A. A special subject is one which has a longer and more intricate story—

MR. GROSVENOR: I want to object to all this, not only on the grounds heretofore stated, but it is repeating again and again, definitions that have already been testified to many times, and, therefore, it is merely repeating and filling up the record with matter already testified to, and I object also because it is immaterial. 4

The Witness: A special subject is a longer and more intricate story, in which the producer takes more interest, and goes to greater pains, because of its importance, and because of the fact that usually a great deal more money is spent in perfecting the picture than is spent on the average one-reel subject.

By Mr. KINGSLEY :

1 Q. Since the formation of the Patents Company, has the price of motion picture shows to the general public been increased, on an average?

Mr. GROSVENOR: Objected to as immaterial, the question relating to prices of admission fees collected of visitors, the theatres not being owned by any of the defendants and, therefore, the subject matter being immaterial.

2 The Witness: The tendency at the present time is to charge higher admission prices.

By Mr. KINGSLEY :

Q. Are the five and ten-cent shows still numerous? A. They are still numerous.

Q. Do the licensed producers of motion pictures who signed the original license agreement December 18th, 1909, have any competition with the Kinemacolor people? A. Yes, sir.

3 Q. Are Kinemacolor pictures now shown in the various theatres? A. Yes, sir; Kinemacolor pictures are put in usually as an extra attraction, a feature attraction.

Q. Do you mean it is put on in addition to the general program of a theatre, or that it forms a part of the program and that you call it an extra attraction because it is different from the black and white pictures? A. It becomes part of the program, but they usually feature it, advertise it like a star vaudeville act.

4 Q. And when you say "extra attraction," you mean featured and advertised specially? A. Yes.

Q. But, as a matter of fact, it displaces the black and white motion pictures to the extent it is used? A. It displaces a portion of the regular program, yes.

Q. You started to say something Friday when you were interrupted, respecting the character and the antecedents and business ability of men in the exchange business, who had gone into the business in 1907 and 1908. Is there anything you want to add to what you stated then? A. I started to say that a great many of the exchange owners were men

who had traveled with small traveling circuses and street carnivals, who had been lecturers and ballyhoos and owners of side-shows, and they were not men to be regarded as men of great business integrity or of high calibre, as one usually refers to a business man—we had not much faith in them; we didn't trust them as we would trust men who had been engaged in commercial lines of business for many years and such as would usually receive good rating in Dun's and Bradstreet's. 1

Q. At page 1702 of the record, you testified regarding special prices which were made by Miles Bros. Do you recall that? A. I think I said that Miles Bros. were the first concern who instituted the practice of shipping reels from point to point, for which they charged around ten dollars per reel for the service or for furnishing that reel. 2

Q. Now, was that the minimum price in the art? A. Well, that was to my knowledge, around the lowest figures that had been reached in the renting of reels at that time.

Q. And during what time was that? A. That was around 1907 or 1908.

Q. And after that, in 1908 and 1909, ten dollars was the lowest price reached in renting motion pictures? A. Oh, yes—that was ten dollars for a reel. Now, the average price would be about, or has reached, as low as one dollar per reel per week. 3

Q. So that prior to the formation of the Edison licensees, the lowest known price was established by Miles Bros. at about ten dollars per reel per week? A. Yes, sir, and since that time the price has gone steadily downward.

Q. So that now, on many occasions, it is about one dollar per reel per week? A. That is the basis on which commercial service used to be figured when we were in the exchange business, and I understand it has gone still lower since that time. 4

Q. Lower than one dollar per week? A. Lower than a dollar per week, yes, sir.

Cross examination by Mr. GROSVENOR:

Q. Mr. Smith, you have been engaged throughout your lifetime, have you not, in the business of creating or devising forms of amusement for the public? A. No, sir.

1 Q. How long have you been engaged in the motion picture business? A. Since 1896.

Q. Before that, what was your occupation? A. As a boy, I learned the art of book-finishing.

Q. And then what did you do? A. I was engaged in the Lyceum Field for perhaps a year, before we started in the moving picture business.

2 Q. What was the Lyceum Field? A. The Lyceum Field was a system of giving entertainments before churches, Young Men's Christian Associations and kindred societies that are affiliated with churches and religious orders generally throughout the country, and which societies were generally in small cities where there were no theatres, and these organizations would give a course of entertainments throughout the season for which the church members or members of the societies or the townspeople might subscribe, and for which also there were bureaus in various large cities who made a specialty of furnishing the style of talent that appealed to that class of patronage.

Q. Then, you were in the business of furnishing talent to these lyceums, were you? A. Yes, sir.

3 Q. And did you sometimes furnish the talent, yourself? A. Yes.

Q. What kind of talent did you supply in your own person? A. Why, sleight-of-hand performances, ventriloquist, shadow-graphist and an impersonator of various characters.

Q. You, then, traveled around and furnished services of the character described, to these various churches and lyceums? A. Yes.

Q. And did you confine your rendering and performing of services to churches? A. The societies we usually worked for were of the class I have previously described.

4 Q. Did you restrict your performances to churches, or did you also give these sleight-of-hand performances in other places? A. They were usually in churches or Young Men's Christian Associations.

Q. You never took part in any of these street carnivals you have described? A. No, sir. I never participated in a street carnival.

Q. Then you left that business and went into the motion picture business, when? A. The latter part of 1906—1896, I mean.

Q. Are you a Director of the General Film Company, to-day? A. Yes, sir. 1

Q. And you have been a Director since that company was organized? A. No, sir.

Q. How long have you been a Director? A. Mr. Rock was the first Director representing the Vitagraph Company, and I succeeded Mr. Rock.

Q. When were you on the Executive Committee of the General Film Company? A. At the same time I was a Director of it.

Q. Were you on the Executive Committee of the General Film Company during the first year of its organization? A. I think so. 2

Q. And did you at the same time attend meetings of the licensed manufacturers which were held from time to time to consider the question of cancelling the licenses of various exchanges who might have been violating the rules of the licensees? A. Yes, sir.

Q. It was the duty of the Executive Committee, was it not, of the General Film Company, to buy rental exchanges; that was one of its duties, was it not? A. I don't know that it was.

Q. For the purpose of refreshing your recollection in regard to the last question, I read to you from the record the minutes of the first meeting of the Board of Directors of the General Film Company of May 25th, 1910, printed at page 260 of Volume I of the record, stating: "Resolved, That the Executive Committee be, and it hereby is authorized and empowered to purchase the business of any existing licensed motion picture exchange at such price and terms and to be paid for in preferred stock or money, or both, in such proportion as in the judgment of the committee would be a profitable investment for the company." Does that refresh your recollection? A. No, sir. 3 4

Q. Whether it was the duty of the Executive Committee of the General Film Company or not, it is a fact, in any event, that the Executive Committee did proceed to negotiate for the purchase of many of the exchanges? A. As a member of the Executive Committee, I have never participated in the purchase of any exchange.

Q. How many comprised the executive committee? A. Three.

Q. Did one of the members of the executive committee act

1 for the executive committee and transact the business of purchasing those exchanges? A. Well, I don't know. I think Mr. Kennedy and Mr. Berst and myself were probably the executive committee at that time, and as I was located at our studio in Brooklyn, I was always under the impression that Mr. Kennedy and Mr. Berst were kind enough to relieve me of the labor of running over from Brooklyn to New York to attend these meetings.

2 Q. In any event, while you were a member of this executive committee, as stated in the minutes, you did attend meetings of the various licensed manufacturers at which was considered the cancellation of the licenses of rental exchanges? A. Yes, sir.

3 Q. Mr. Smith, for the purpose of refreshing your recollection, I wish you to glance at an extract from the by-laws of the General Film Company, numbered Exhibit 64 of the Petitioner, and printed in Volume I, at page 204, folio 1, which I will read: "During the time intervening between meetings of the Board of Directors, the business of the company shall be directed by an Executive Committee. The Executive Committee shall consist of the President of the Company, who shall be chairman, and two directors who shall be elected members of the Executive Committee in the same manner in which the officers of the Company are elected. The Executive Committee shall exercise all the powers of the Board of Directors while the Board is not in session; shall keep minutes of the business transacted at all its meetings, and shall report to the Board of Directors at each meeting of the Board all the business that it transacted since the last meeting of the Board." Do you know what has become of those minutes of the executive committee which the by-laws state shall be kept? A. No, sir.

4 Q. Mr. Pelzer, one of the officers of the General Film Company already on the stand, has been questioned about that. Did you assist or endeavor to assist Mr. Pelzer in searching for them? A. No, sir.

Q. Do you know whether those minutes contain any record of the purchases or the negotiations of purchase of the different rental exchanges in the year 1910? A. I don't remember the minutes of the Executive Committee. I don't remember hearing them read.

Q. Did you ever read them yourself? A. No, sir.

Q. You know what they contained? A. I didn't see them, 1
so I don't know what they contained.

Q. Now, you testified on Friday in regard to the purpose
of the formation of the General Film Company as follows,
at page 1700, first: "Q. What was the object and purpose in
forming the General Film Company, as you understood it,
at the time that it was formed? A. The idea was to form a
sort of model exchange, that might serve as an example to
all the exchanges then operating." And you also testified in
regard to the same subject, at page 1708: "Q. Was it
in contemplation, so far as you were concerned, at the time 2
the General Film Company was formed, that the General
Film Company would ultimately do practically all the ex-
change business in the United States?" And you answered,
"No, sir." And then: "Q. Was it in contemplation, so far as
you were concerned, or so far as others were concerned with
whom you conversed, who were also interested in the for-
mation of the General Film Company, that a large number of
exchanges would be operated by the General Film Com-
pany?" And you answered, "A. Well, I never understood that
was the idea at the start. After many exchanges had been
offered to us, everyone knew then that the General Film Com-
pany would be larger than they had thought at commence- 3
ment." Is there anything you want to add to either of those
answers which I have read? A. I cannot think of anything
at this moment that I want to add to them.

Q. Now, I will read to you from Exhibit 78 of the Peti-
tioner, Volume 1, page 251, being a letter addressed by J. J.
Kennedy, President of the General Film Company, to Wil-
liam Pelzer, Secretary, dated January 23rd, 1912, which be-
gins: "Dear Sir: Sometime before the General Film Company
was organized, an estimate of the value of the business of ex-
changes leasing licensed motion pictures, was made by men 4
familiar with the manufacture of motion pictures and also
with the business of exchanges. According to this estimate,
the value of said business was \$3,468,847." Mr. Kennedy was
the President of the General Film Company, was he not?
A. Yes, sir.

Q. And is the same individual who was on the Execu-
tive Committee and negotiated the purchases? A. Yes, sir.

Q. I call your attention to Petitioner's Exhibit 80, be-
ing the minutes of a regular meeting of the Board of Di-
rectors of the General Film Company, held at 10 Fifth

1 Avenue, New York City, October 11th, 1910, at 4:30 P. M.; present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Smith, Spoor and Pelzer, Secretary. The Smith named there was yourself? A. Yes, sir.

Q. "Mr. Kennedy reported on behalf of the Executive Committee that the Company had purchased 39 exchanges, and made the following detailed report of conditions as of October 10, 1910." How long had the General Film Company been doing business on October 10th, 1910? A. I don't remember dates.

2 Q. It was less than six months, wasn't it? A. I could not say.

Q. "Number of Licensed Exchanges in entire country, including Yale Company of St. Louis, 59. Owned by General Film Company, 39. Not owned by General Film Company, 20. Percentage of Exchanges owned by General Film Co., 66%. Percentage of business of entire country controlled by General Film Company, based on reels, 71%." Continuing: "Payments authorized for Exchanges owned Oct. 10th, stock, \$591,400; cash, \$1,483,200. Prices—actual—including interest amounting to \$90,500, stock, \$535,900; cash, \$1,369,600. Saving stock, \$55,500; cash, \$113,600. Combined saving, cash, \$169,100." And continuing: "Total payments authorized for all exchanges in entire country, stock, \$988,800; cash, \$2,480,000." Now, does the reading of those minutes, Mr. Smith, refresh your recollection as to what authorization, or when the authorization, if any, was given, naming the figure I have stated and read from the minutes as being the amount authorized for all the exchanges in the entire country? A. No, sir, I have no recollection of ever seeing those figures before.

4 Q. When the figures were read at the meeting of the directors at which you were present, was any question asked by any of the directors present as to how that authority, or how the statement appeared in the minutes of that authority being given, and the figure named?

Mr. KINGSLEY: Objected to on the ground that the question assumes that these figures were read at the meeting, while it does not appear that they were read.

The Witness: I have no recollection of ever seeing those

figures until they were read to me in the Fox case, I think it was.

1

By Mr. GROSVENOR:

Q. Let me ask you, is it not a fact that the sum of the two figures, namely, stock and cash, being respectively \$988,800, stock, and cash, \$2,480,000, corresponds to the figure given by Mr. Kennedy in his letter to Mr. Pelzer as being the estimate arrived at of the value of the business of the exchanges leasing licensed motion pictures, which estimate, he states in the letter, was made sometime before the General Film Company was organized?

2

Mr. KINGSLEY: Objected to on the ground that it calls for a conclusion, a computation, and a characterization by the witness.

A. I had nothing to do with the compilation of those figures, and I know nothing about them.

Q. Look at that, and see if that question is not as stated? A. What is it that I am to look at?

3

Mr. GROSVENOR: Read the question to the witness, please.

The Examiner repeats the question as follows:

“Q. Let me ask you, is it not a fact that the sum of the two figures, namely, stock and cash, being respectively \$988,800, stock, and cash, \$2,480,000 corresponds to the figure given by Mr. Kennedy in his letter to Mr. Pelzer as being the estimate arrived at of the value of the business of the exchanges leasing licensed motion pictures, which estimate, he states in the letter, was made sometime before the General Film Company was organized?”

4

Mr. KINGSLEY: I object to the question as incompetent and immaterial, as calling for a conclusion by the witness, for a comparison, and a computation, and improper in form, improper in substance, and argumentative.

1 The Witness: Those figures agree in this book.

By Mr. GROSVENOR:

Q. Please look at Petitioner's Exhibit No. 61, being the list of exchanges whose licenses were cancelled or terminated by the Motion Picture Patents Company, and refreshing your recollection, state the names of the exchanges whose licenses were cancelled between the dates April 14th, 1910, and October 15th, 1910.

2 Mr. KINGSLEY: I object to the question as incompetent and immaterial, also on the ground that Petitioner's Exhibit 61 has been subsequently corrected by the witness Marvin, and is not a correct statement of the situation. I further object to the method employed by the cross examiner in asking the witness to make a computation or a summary for him.

3 Mr. GROSVENOR: This question and questions to follow are for the purpose of refreshing the recollection of the witness in connection with certain matters he testified to on direct examination, which answers will be called to his attention as soon as the memory of the witness has been refreshed by these exhibits.

4 A. The licenses were cancelled by the Motion Picture Patents Company. I have nothing at all to do with the Motion Picture Patents Company, and I don't know what licenses were cancelled, and merely knew at that time such questions as were brought up before the licensed manufacturers, perhaps, asking their advice.

By Mr. GROSVENOR:

Q. Isn't it a fact, Mr. Smith, that in the period I have named, from April, 1910, to October, 1910, the licensed manufacturers met together and considered the subject of the cancellation of the licenses of various exchanges? A. At various times, the question of the cancellation of different licenses was brought up before the licensed manufacturers, but I never understood—

Q. Were you present at such meetings?

Mr. KINGSLEY: Let the witness finish his answer.

Mr. GROSVENOR: I am not asking what he understood. I am asking for the facts.

Mr. KINGSLEY: He has a right to finish his answer. The witness may finish the answer. Please read the question and answer.

The Examiner repeats the question and answer to the witness, as follows:

“Q. Isn't it a fact, Mr. Smith, that in the period I have named, from April, 1910, to October, 1910, the licensed manufacturers met together and considered the subject of the cancellation of the licenses of various exchanges? A. At various times the question of the cancellation of different licenses was brought up before the licensed manufacturers, but I never understood—”

By Mr. GROSVENOR:

Q. Continue. A. I never understood that the manufacturers had anything at all to do with the cancellation of the licenses. To my own knowledge, that was always the prerogative of the Patents Company, and if any question was asked of the manufacturers, it was merely extending a courtesy to us.

Q. But that courtesy was commonly extended, wasn't it? A. It was extended on several occasions.

Q. And then the manufacturers, after they had considered the subject, recommended what policy should be pursued, to the Patents Company? A. Yes, sir.

Q. And that was the practice, or that was what the manufacturers were doing in the period I have named, namely, from April, 1910, down to December, or down to October, the date of the minutes, 1910? A. That was done on many occasions, but I would not want to say that it was done on every occasion. Licenses were usually cancelled for cause, and I never understood that the Patents Company was obliged to consult us at all.

Q. Whether they were obliged to or not, they did, though, consult you? A. On several occasions.

Q. You were present at some of those meetings, weren't you? A. Yes, sir.

1 Q. And voted on the questions? A. Yes, sir.

Q. And in October or November, 1911, that is, a year later, you were present at a meeting of the licensed manufacturers at which the subject was considered of recommending to the Patents Company the cancellation of the license of the Greater New York Film Rental Company? A. Yes, sir.

2 Q. Now, I read to you your answer given on direct examination, page 1720: "Q. Did you, as a director of the General Film Company, in the year 1910, and in the year 1911, at any time, either directly or indirectly, attempt to influence or induce the Motion Picture Patents Company or its representatives to cancel the license of any rental exchange for the purpose of aiding the General Film Company to acquire the same? A. I did not." Have you anything to add to that answer? A. No; I think that is a true and correct answer.

Q. In what capacity did you attend these meetings of the licensed manufacturers at which the subject of the cancellation of the license of rental exchanges was considered? A. I attended them as the representative of a licensed manufacturer.

3 Q. At the same time you were attending meetings, or in the same period, you were attending meetings of the General Film Company as director? A. Around the same dates, yes.

Q. All the directors of the General Film Company were also licensed manufacturers? A. Some of them were.

Q. All of them were either licensed manufacturers or important officers of licensed manufacturers? A. Yes.

4 Q. So that the same group of men who at one time as licensed manufacturers voted on the subject of the cancellation of licenses, at another time would meet as directors of the General Film Company and hear reports relating to the subject of the acquisition of rental exchanges? A. Yes, sir.

Q. Do you think that you had two personalities in attending those meetings, each of which attended one and only one of those meetings?

Mr. KINGSLEY: I object to that question as improper, and calling for a characterization on the part of the witness of his own proceedings and his own work.

The Witness: No, sir; I don't think I had two personalities. 1

By Mr. GROSVENOR:

Q. Then the fact is that in attending both of these meetings, that is, the meetings of the licensed manufacturers, considering the subject of cancellation of licenses, and in attending the meetings of the General Film Company directors, who considered the subject of the purchases of the various rental exchanges, you were acting at both meetings for the best interests of the company which you represented, 2
namely, the Vitagraph Company of America? A. When I attended a meeting of the licensed manufacturers, I attended as the representative of a licensed manufacturer. When we were notified by the officials—

Q. Of which manufacturer?

Mr. KINGSLEY: Just a moment; complete your answer.

The Witness: The Vitagraph Company. 3

By Mr. GROSVENOR:

Q. Complete your answer. A. When we were notified by the Patents Company that they were about to cancel the license of the Greater New York Film Rental Company, because of violations, we were asked if we had any objections, and I did not state that I objected, because I did not think that it would have any bearing on the situation, believing always, as I have previously stated, that the right was paramount with the Patents Company to cancel a license whenever they saw fit, and in point of fact, many licenses were cancelled by the Patents Company to which the manufacturers objected, because it meant the loss of a customer every time a license was cancelled. 4

Q. In attending the meetings of the licensed manufacturers which considered the subject of the cancellation of licenses, you attended as the representative of the Vitagraph Company of America? A. Yes, sir.

Q. And your position as Director of the General Film Company was also to represent the interests of the Vitagraph Company of America on the Board of the General

1 Film Company. Isn't that right? A. It is right, and it is wrong. At the present time, I am a Director, a member of the Executive Committee, and the Treasurer of the General Film Company, but as a Director and member of the Executive Committee and the Treasurer of the General Film Company, I don't think that I should use my influence to further the interests of the Vitagraph Company. I endeavor, as Treasurer of the General Film Company, to give every person and business represented therein, a square deal, and that is always my aim and ambition.

2 Q. I have no doubt you do, Mr. Smith, but my question was not relating to your position as Treasurer. I say, your position as Director of the General Film Company is that of a representative of the Vitagraph Company of America, isn't it? A. Yes, sir.

Q. So that in attending both meetings, the meeting of the licensed manufacturers which considered the cancellation of the licenses of rental exchanges, and in attending, as Director, the meetings of the Directors of the General Film Company, which considered the purchase of the different rental exchanges, you attended both meetings as the representative of the Vitagraph Company of America? A. Yes. Of the Vitagraph Company of America.

3 Q. And your position, or the situation in which you found yourself, in attending these meetings, was identical with the situation, or the position of each of the other Directors?

Mr. KINGSLEY: I object to that as calling for a conclusion of the witness.

By Mr. GROSVENOR:

4 Q. That is to say, for instance, referring to the minutes of October 11th, 1910, read to you, which state who was present, taking some of the names for illustration—Berst. He, as Director of the General Film Company, was representative of Pathe Freres, just as you were the representative of the Vitagraph Company of America? A. Well, I don't know anything about Mr. Berst, except that he was the Vice-President of the Pathe Freres Company.

Q. Well, was there any other representative of Pathe Freres Company on the General Film Company? A. No.

Q. Well, then, isn't it a fact that Berst did represent

the Pathe Freres Company on the Board of Directors of the General Film Company? 1

Mr. CALDWELL: That question is objected to as calling for an opinion of this witness on the duties of a third person. It is the duty of a Director to represent his company.

The Witness: I represented the Vitagraph Company, and I know nothing at all about the other Directors, except that they were elected. 2

By Mr. GROSVENOR:

Q. Well, let us get at it another way. You say that Berst was the only member of Pathe Freres that was a Director of the General Film Company? A. As far as my knowledge goes.

Q. And you say also that each one of the Directors of the General Film Company was also one of the licensed manufacturers, or an important officer, manager or owner of one of the licensed manufacturers? A. As far as my knowledge goes. 3

Q. And isn't it also true, so far as your knowledge goes, that not one of the Directors of the General Film Company represented more than one of the licensed manufacturers? A. Mr. Pelzer was a Director of the General Film Company, and he did not represent any manufacturer; and Mr. Dyer was a Director of the General Film Company, and he did not represent any manufacturer.

Q. Who did represent the Edison Company on the Board of the General Film Company? A. Mr. Dyer represented them at one time.

Q. We are referring now, Mr. Smith, to these minutes which I have read. Let us just confine ourselves to those minutes for the present. Mr. Dyer was on the Board at that time, wasn't he? A. As far as I recollect. 4

Q. I will show you the minutes. See if that will refresh your recollection so that you can answer the question positively. A. According to these minutes, Mr. Dyer was present.

Q. Now, coming back to the question, did any Director

1 on the Board of the General Film Company represent more than one licensed manufacturer? A. Not to my knowledge.

Q. Isn't it also true that every licensed manufacturer was represented on the Board of Directors of the General Film Company? A. I know there was a period of a year when the Biograph Company had no representation there.

Q. Let us get to this period when they were buying these exchanges. The Biograph Company did have a representative then, didn't it? A. Yes.

Q. And that was Mr. Kennedy? A. Yes.

2 Q. Then, during this period covered by these minutes, from April, 1910, to October, 1910, every licensed manufacturer did have a representative on the Board? A. To the best of my knowledge, yes.

Q. And there was not anybody on the Board who was not a representative of one of the licensed manufacturers, was there? A. I think not.

3 Q. In view of these facts, do you care to modify in any way the answers you gave to these questions appearing at page 1720: "Q. Did the General Film Company in any way control the course of or official action of the Motion Picture Patents Company? A. It did not.

"Q. Did the Motion Picture Patents Company at any time after the formation of the General Film Company, collusively cancel the license of the rental exchange, in order that the General Film Company might more readily and easily purchase it? A. No, sir."

A. (No answer by the witness.)

Mr. GROSVENOR: Will you repeat the question to the witness? He has not answered it.

4 The Examiner repeats the question to the witness, as follows:

"Q. In view of these facts, do you care to modify in any way the answers you gave to these questions appearing at page 1720: 'Q. Did the General Film Company in any way control the course of or official action of the Motion Picture Patents Company? A. It did not.

"Q. Did the Motion Picture Patents Company at any time after the formation of the General Film Company, collusively cancel the license of the rental ex-

change, in order that the General Film Company might
more readily and easily purchase it? A. No, sir.' " 1

The Witness: No; I have told the truth there, and I cannot change the truth.

By Mr. GROSVENOR:

Q. I did not ask you whether or not you told the truth. I asked whether or not you had anything to add to either of those answers? A. I beg your pardon. I thought you asked if I wanted to change them. 2

Q. Well, change them, or add to them? A. No; I think I have nothing to add to them.

Q. Can you give the date when that injunction was issued against you in favor of the Edison Company, respecting which you testified on direct examination by your counsel? A. No, sir; I know it was in 1907 or 1908. I know that I was so worried, and it worried my wife, and we had a little baby at that time, and it killed that baby. That is what I have got to say.

Q. Didn't you testify on direct examination that the injunction was taken out in 1901 or 1902? A. There was another injunction of that date. That was another suit that they brought. 3

Q. Have you refreshed your recollection by looking at any of the papers or any of the documents relating to the matter? A. No, sir, I have not.

Q. Wasn't that first injunction obtained prior to the decision of Judge Wallace in this Circuit, in the Circuit Court of Appeals, which held invalid that patent of Edison which at that time embraced six claims relating to the camera and film? A. You will have to read that question, please. 4

The Examiner repeats the question as follows:

"Wasn't that first injunction obtained prior to the decision of Judge Wallace in this Circuit, in the Circuit Court of Appeals, which held invalid the patent of Edison which at that time embraced six claims relating to the camera and film?"

The Witness: I don't remember any decision by Judge

- 1 Wallace. I know that the Edison Company brought suit against Mr. Blackton and myself in the very early years of our business, which would be around 1897 or 1898, and that we were put under injunction, and that later, when we became associated with Mr. Rock, we incorporated the American Vitagraph Company in 1900, and after that we were sued, and again placed under injunction. Whether that was in 1900 or 1901, I can not be sure.

By Mr. GROSVENOR:

- 2 Q. When you were referring, a few questions ago, to this unfortunate death in your family, you used the date 1907 and 1908. Did you mean 1897? A. I mean 1897 and 1898.

- Q. You must be careful about these dates, Mr. Smith, because there are important decisions which affect them, and that is the reason I am asking you whether or not you have refreshed your recollection by referring to memoranda. Now, isn't it true that this injunction was issued against you more than twelve years ago, and was prior to the decision in this Circuit by the Circuit Court of Appeals holding that patent invalid? A. No; they were issued on the dates that I have
3 specified—1897 or 1898, and 1900 or 1901.

Q. Don't you know that the camera patent and the film patent of Edison were held invalid by the Circuit Court of Appeals of this Circuit, in 1902? A. No, I don't know that. I think it was after that date that we heard a decision had been rendered against the Biograph Company.

Q. Have you followed this litigation, or did you follow the litigation in those years? A. As closely as we were able to. It was very important to us at those times.

- Q. Aren't you able, if you followed the litigation, to state approximately the date of the first great decision by Judge
4 Wallace in this Circuit, which states that Edison's camera and film patent was invalid? A. No, I don't know that date.

Q. Were you present during the cross examination and direct examination of Dyer on this same subject? A. No, sir.

Q. Are you able to answer or to state whether or not that injunction of the Edison Company against you was in fact made valueless because of a subsequent decision in 1902 holding the patent invalid? A. The first time that I knew that we were freed from the injunction or injunctions that we had been under, was when I went personally

to Kerr, Page & Cooper, on lower Broadway, and they advised us that because of a recent reissue of the patent, we were free from the injunctions that we had been under previously.

1

Mr. GROSVENOR: Repeat the question, please. He has not answered it.

The Examiner repeats the question as follows:

“Q. Are you able to answer or to state whether or not that injunction of the Edison Company against you was in fact made valueless because of a subsequent decision in 1902 holding the patent invalid?”

2

The Witness: No, I don't remember anything about that decision.

By Mr. GROSVENOR:

Q. Will you please bring into court as a part of this cross examination, a certified copy or a copy vouched for by your attorneys, of the injunction obtained against you by the Edison Company in the year 1901 or 1902? A. I will, if it is possible to get it.

3

Q. Mr. Smith, are you able to point to any decision from 1902 when, as the testimony shows, the camera and film patent was held invalid—are you able to point to any decision from that date, 1902, down to 1908, which held the film patent was valid, or the film reissue was valid?

Mr. KINGSLEY: Objected to as incompetent and immaterial.

4

A. Well, I am not very conversant with the litigation of either the camera or the film patent. All I know is that we were greatly harassed by it in the early history of our business, and when we were able to take a license from the Edison Company, which put an end to that uncertain condition of affairs, we were glad to do so and we took out a license.

Q. Are you able to point to any decision holding the

- 1 film patent valid, which decision was rendered between 1902, the date of Judge Wallace's opinion, and 1908, the time when you took out a license from the Edison Company?

Mr. KINGSLEY: Objected to as incompetent and immaterial.

The Witness: I don't recollect any decisions around those dates.

- 2 By Mr. GROSVENOR:

Q. That is, you don't recall there being any decision holding the film patent valid, is that right?

Mr. KINGSLEY: Objected to as incompetent and immaterial.

The Witness: No.

By Mr. GROSVENOR:

- 3 Q. That is right or wrong? A. I don't recall.

Q. You don't recall any decision? A. I don't recall any decision.

Q. Are you able to state whether or not in that period from 1902 to 1908, you had been sued on the film patent? A. We were sued. I don't know what patent we were sued on.

- 4 Q. Have you made any effort to refresh your recollection as to that suit, before testifying? A. I endeavored to find the papers that were served on us in that suit, but in 1906 or 1907 we had a fire at our office in 116 Nassau Street, which cleaned us out there, and most, if not all, of those papers were burned up at that time.

Q. Did you make any effort to get the papers from any of the other co-defendants, for example, from the Edison Company who at that time sued you? A. No.

Q. The fact is, your recollection is very indefinite so far as dates or numbers of patents or subject matter of patent litigation is concerned? A. Yes, I have not any defined idea as to dates.

Q. Coming to the patents that the Vitagraph Company

of America assigned to the Motion Picture Patents Company in 1908, the principal patent you assigned was the one which you described on your direct examination? A. Yes, sir. 1

Q. And that patent was a patent which made an improvement on the projecting machine? A. Yes, sir.

Q. Who makes the best projecting machines today? A. That would be difficult for me to state, because I have not kept very close track with the projecting end of the business.

Q. Name two or three of the manufacturers of projecting machines? A. There is the Pathe machine, the Precision machine. 2

Q. These projecting machines are very expensive and complicated machines, are they not? A. They are more expensive today than they were ten years ago.

Q. And in those ten years, many patents have been issued relating to the projecting machines? A. I don't think the patents apply so much to the projecting machine as they probably apply to attachments that go with them.

Q. This patent which you referred to on direct examination and which was the most important patent which you assigned, was a patent relating to the attachments? A. It was a portion of the projecting machine. 3

Q. Well, it is a portion or attachment which became part of the projecting machine? A. Yes.

Q. Then it did relate to an attachment? A. It related to an attachment at that time, and I think it has become an actual portion of the machine at the present time, the early machines having no definite device for taking care of the setting of the picture.

Q. You said on direct examination today that a great deal of the success of a play depends upon the photography, and I think you gave the figure eight-tenths. The term "photography" embraces a great deal, does it not, as embraced by you? You meant the printing too, as well as the taking of the picture? A. No, the printing would be a secondary consideration if the negative in the first place was not perfect. 4

Q. How much of the process did you include in the term and the percentage you named? A. I was speaking of the negatives at the time. I referred in no way to the positives.

1 Q. You were referring to the negative after it had been developed? A. After it had been developed, yes.

Q. The developing is a very important part of the art, isn't it? A. Yes, but there is not so much danger of things going wrong with the developing after you have got a perfectly exposed negative in the first place. You are liable to send a man five thousand miles away to get a picture, and as long as he brings back a perfectly exposed negative, while the developing is important, there is not as much danger of the negative being spoiled in developing—

2 Q. You also stated this morning that you copyright every picture. That is to say, you copyright every one of your positive films of new plays? A. Well, we don't send every picture to Washington to be copyrighted. After the picture is finished—after the negative is finished and the positive is printed, we send a copy or two copies, I am not sure which, of each reel to Washington.

Q. That is, you copyright the positive film, the positive picture? A. I don't know the exact process we go through. All I know is, we copyright it.

3 Q. You copyright the picture just as anyone would copyright a photograph? A. I would not be sure whether it is a photographic copyright—

Mr. KINGSLEY: I object to that as calling for a conclusion.

The Witness: We send a copy with a scenario of the picture, and there is a firm of attorneys in Washington who attend to that end of the business. Just how they do it or what they do, I don't know.

4 By Mr. GROSVENOR:

Q. You don't know, then, what it is that you do copyright? A. No.

Q. Please name, as far as you can, the manufacturers that go to make up the thirty or forty independent manufacturers, which is the number stated by you? A. I made a brief summary of that in my mind. Any trade paper can give you the names of the manufacturers. I will give them as far as my recollection will carry, if you so wish.

Q. All right, go ahead.

Mr. KINGSLEY: Is there anything that will refresh your memory?

1

The Witness: I will give them from memory as much as I can recollect, but they are in the paper. There is the Imp, Powers, Thanhauser, Reliance, Majestic, the Kay-Bee, the 101, the Victor.

By Mr. GROSVENOR:

Q. Rex? A. The Rex.

Q. Bison? A. Bison.

2

Q. Nestor? A. Nestor. The Ranous, the Helen Gardner Corporation.

Q. Well, that is enough. It is a fact, isn't it, Mr. Smith, that you have named there as different manufacturers, what are in fact made by one company, for instance, the Universal Company includes the following productions. Read the testimony of Mr. Dyer, page 1596 *et seq.*? A. Well, this applies to the Mutual Company as it stands today. The time I was speaking of was when those companies or a great many of them, were individual and separate companies. When they were first formed, they were all owned individually, and were later bought up by the Mutual Corporation.

3

Q. You cannot name thirty or forty independent producers or manufacturers of motion pictures, today, can you? A. Well, I don't think from my memory I could pick out all of those different names.

Q. Isn't it a fact in attempting to give names as you did a few minutes ago, you gave names that were the names of different brands or trade-marks manufactured by the Universal and the Mutual? A. Well, I believe at the present time the Universal controls the Imp, the Powers and the Thanhauser. I merely mention those three names for an instance. But prior to the time when the Universal people bought those manufacturers, if they have bought them—I don't know that they have—they were separate and individual concerns. I know they all release their films through the Universal exchanges, but as far as my knowledge goes, they are owned individually. I don't know myself that they are owned by any one company.

4

Q. How long has the Kinemacolor Company been a

- 1 licensee or one of the Patents Company licensees? A. I think for about six months.

Redirect examination by Mr. KINGSLEY:

Q. When you were acting as a director of the General Film Company, did you consider yourself as acting for the General Film Company or for the Vitagraph Company of America? A. For the General Film Company.

- 2 Q. I show you the questions and answers in Frank L. Dyer's direct examination, page 1596 *et seq.*, which were shown to you by Mr. Grosvenor, and ask you to read them. Do you notice that the producers of the various brands mentioned there are referred to as allied in one case to the Mutual Company, and as allied in the other case to the Universal Company? A. Yes.

Q. Is it your understanding of the situation that they are allied with those two companies with respect to the distribution of their products? A. Yes, sir.

- 3 Q. You don't know whether they are owned or controlled by the Universal Company in the one case, and by the Mutual Company in the other case? A. No, I do not.

Mr. GROSVENOR: I want to remind you, Mr. Smith, that you are requested to get a copy of the injunction issued against you in 1902, and also I shall have no objection if the witness desires to return to give more specifically the dates of this various litigation, in case he desires to do so.

Whereupon, at 12:30 P. M., the hearing is adjourned until 2:30 P. M. at the same place.

4

NEW YORK CITY, November 18, 1913.

The hearings were resumed pursuant to adjournment at 2:30 o'clock P. M., November 18, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon, J. A. BERST, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows: 1

Direct examination by Mr. CALDWELL:

Q. Mr. Berst, where do you live? A. Two hundred and three West Eighty-first Street.

Q. And in what business are you engaged? A. I am engaged in the business of manufacturing motion pictures, producing motion pictures.

Q. Where were you born, Mr. Berst? A. I was born 2 in Paris, France.

Q. How long have you lived in this country? A. Approximately nine years.

Q. Do you speak English well, and understand it well? A. I can understand. I can't speak some words, possibly many words I do not understand very well the meaning of.

Q. You are not very familiar, then, with legal terms? A. Not too familiar, some words I understand fairly well.

Q. What position do you occupy now, Mr. Berst? A. I am Vice-President of Pathe Freres.

Q. How long have you occupied that position? A. Since 3 June, 1908.

Q. And in what business is Pathe Freres engaged? A. Producing and manufacturing motion pictures.

Q. Is that a corporation? A. It is a corporation of the State of New Jersey.

Q. Who is the President of that company? A. Mr. Ernest A. Ivatts.

Q. Where does he live? A. In France.

Q. And as the Vice-President of the company, you have been discharging the duties of the President, have you not, in the absence of Mr. Ivatts? A. Yes, sir. 4

Q. Has he spent much time in this country since this corporation was formed? A. No, sir.

Q. When was it formed? A. In June, 1907.

Q. Did the corporation of Pathe Freres succeed to the motion picture business theretofore conducted by some other individual, or corporation? A. It succeeded to the business of the Pathe Cinematograph Company, which was an individual business.

1 Q. You were connected with the Pathe Cinematograph Company? A. I was.

Q. When did that company commence business in this country? A. In August, 1904.

Q. What was the nature of the business conducted by the Pathe Cinematograph Company? A. Importing and selling motion pictures.

Q. What pictures did it import? A. It imported principally, I would say, exclusively, pictures made by the Compagnie Generale des Phonographes Cinematographiques et Appareils de Precision.

2 Q. This company, the Compagnie Generale des Phonographes Cinematographiques et Appareils de Precision, was that a corporation which had in France handled the pictures of Pathe Freres? And we will refer hereafter on this record, for the purpose of brevity, to that company as the "Compagnie Generale." A. That is the company which succeeded Pathe Freres.

Q. That succeeded to the business formerly conducted by Pathe Freres? A. Yes, sir.

Q. In France? A. Yes, sir.

3 Q. Did the Pathe Cinematograph Company, which was the American branch of the Compagnie Generale, produce any pictures in this country, or did it confine itself exclusively to importing pictures made in France? A. The Pathe Cinematograph Company exclusively imported pictures made in France.

Q. And did it confine itself to the Pathe pictures, or did it import pictures made by other producers in France than Pathe Freres, or the Compagnie Generale? A. It confined itself exclusively to pictures made by the Compagnie Generale.

4 Q. Did it do a very extensive business of that character prior to 1907? A. Yes.

Q. I think you have already stated that in 1907, it transferred its business in this country to the corporation organized under the laws of New Jersey, known as "Pathe Freres?" A. That is correct.

Q. Do you recall about what month that was of 1907? A. In June of 1907.

Q. Did the corporation of Pathe Freres, in addition to continuing the importation of Pathe films in this country,

at once commence the production of motion pictures in this country? A. No, sir. 1

Q. How long afterwards was it before it commenced the manufacture of positives from negatives, which it had imported? A. It commenced to manufacture positives from negatives in December, 1907.

Q. About the time it had concluded its arrangements for getting an Edison license? A. Yes, about that time. When it had assurances that a license would be granted to it.

Q. Prior to December, 1907, you imported positive prints, did you not, from France? A. Yes, we imported positive prints. 2

Q. You didn't merely import the negatives and print in this country, the positives from the negatives which you had imported prior to 1907? A. No, sir.

Mr. GROSVENOR: Were you, prior, to December, 1907, making positives in this country from negatives which you had imported?

The Witness: No, sir.

Mr. GROSVENOR: You imported merely positives? 3

The Witness: Yes, sir.

By Mr. CALDWELL:

Q. Did Mr. Edison, or the Edison Manufacturing Company, bring a suit against you and the Pathe Cinematograph Company, in the United States District Court, Southern District of New York, for the infringement of his film patent? A. Yes, we were sued by the Edison Manufacturing Company in November, 1904. 4

Q. Do you recall whether that suit was brought by Mr. Edison, or the Edison Manufacturing Company? A. No, I don't recall, now.

Q. I show you a paper, Mr. Berst, and ask you to look at that and see if that will refresh your memory as to whether that suit was brought by Thomas A. Edison, or the Edison Manufacturing Company? A. Yes, it refreshes my recollection. This suit was brought by Thomas A. Edison.

Q. Now, do you know whether Thomas A. Edison, at

1 about the same time, sued any other persons for the infringement of the film patent? A. Yes.

Q. Who were they? A. At about the same time, approximately the same month, Thomas A. Edison brought suit against Eberhard Schneider, Paley & Steiner, Gaston Melies, and the Vitagraph Company of America. He brought two suits against the Vitagraph Company, one on the film patent, and one on the camera patent.

2 Q. Did Paley & Steiner, Melies, Eberhard Schneider, and Pathe Cinematograph Company unite in retaining the same counsel to defend all four of those suits? A. Yes, we advised together, and retained one firm of attorneys to defend us all.

Q. And did you have a written agreement between you to that effect? A. Yes, we made a written agreement for the purpose of dividing the expenses according to the means of each one.

3 Q. I show you an agreement, purporting to be signed by Paley & Steiner, Geo. Melies, Pathe Cinematograph Co., and Eberhard Schneider, dated 7th of December, 1904, and ask you if that is the agreement to which you refer? A. Yes, it is the agreement to which I referred in my preceding answer.

Mr. CALDWELL: We offer that agreement in evidence.

4 Mr. GROSVENOR: I make objection to it on the ground of the immateriality of the document submitted, it being an agreement entered into in December, 1904, between the parties named, as to the division of expenses; and, for the further reason, that on its face it relates to suits brought by Edison on Patent No. 589,168, and the different reissues thereof, without naming the suits, and therefore the testimony and questions attempting to give this the appearance of being an agreement relating to the film reissues exclusively and not relating to the other patents, the camera patent, are misleading, and contrary to the fact.

Mr. CALDWELL: The witness has already stated the suits were on the film patents, and I think he is perfectly competent to testify as to what patent he was charged with infringing. It is material on the

ground that counsel for petitioner has repeatedly claimed that Edison made very little effort to enforce his rights under the film patent. 1

Mr. GROSVENOR: But the agreement as to the division of the expenses of the suits between the parties does not prove anything.

Mr. CALDWELL: I don't offer it for the purpose of showing the division of expenses, but for showing the fact that they united in the selection of counsel to defend the suits.

The agreement offered is received in evidence, and is marked by the Examiner "Defendants' Exhibit No. 112." 2

Defendants' Exhibit No. 112.

AGREEMENT, made this 7th day of December, 1904, between PALEY & STEINER, parties of the first part, GEORGE MELIES by GASTON MELIES his attorney in fact, party of the second part; PATHE CINEMATOGRAPH CO. by J. A. BERST, its attorney in fact, party of the third part and EBERHARD SCHNEIDER doing business as GERMAN AMERICAN CINEMATOGRAPH & FILM CO., party of the fourth part. 3

WITNESSETH:

WHEREAS THOMAS A. EDISON has commenced certain actions against each of the parties hereto in the United States Circuit Court, Southern District of New York, by bills of complaint filed therein arising out of alleged infringements of patent No. 589168 and different re-issues thereof and

WHEREAS the said parties have retained HERMAN HERST JR., attorney and counselor at law to represent them in the said cases and 4

WHEREAS the parties of the first part are desirous of retaining the firm of KERR, PAGE & COOPER, Patent Solicitors as Counsel for the defence in the said cases; and

WHEREAS disbursements and fees for services will be incurred in the defence of the said actions. NOW in consideration of the foregoing and the sum of \$1.00 each to the others in hand paid the receipts whereof are hereby acknowledged.

IT IS HEREBY AGREED between the said parties:

1 FIRST: That the said Herman Herst, Jr., is retained as attorney for the various defendants in the actions hereinbefore referred to and the firm of Kerr, Page & Cooper are retained as general counsel for the defence of said actions.

SECOND: That the parties hereto agree to pay the joint cost of the defence of the four actions hereinbefore referred to as follows:—

The parties of the first, second and third parts to pay each 3/10 of the entire costs and disbursements incurred in the litigation and in the proper defence of the said suits and the party of the fourth part to pay the remaining 1/10.

2 THIRD: IT IS FURTHER AGREED between the parties that this contract shall be binding upon all of the said parties until the determination of the litigation.

FOURTH: That in the event of a determination of the said litigation and it becoming necessary to appeal said cases, then and in that event this agreement shall continue but shall affect only such of the parties hereto as shall continue in the said business, it being understood and agreed that each of the parties hereto shall have the right to discontinue the business involving Cinematograph films and not be liable hereunder for the prosecution of any appeal that may be necessary or taken in the said suits.

3 FIFTH: IT IS FURTHER AGREED that each of the parties hereto shall only be liable to the attorneys and solicitors hereinbefore mentioned only for his proportionate share of the fees and expenses as set forth in this agreement.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

PALEY & STEINER, [SEAL.]

GEO MELIES, [SEAL.]

By Gaston Melies,

Att'y.

PATHE CINEMATOGRAPH CO., [SEAL.]

J. A. Berst,

Att'y.

EBERHARD SCHNEIDER, [SEAL.]

In the presence of:

Herman Herst, Jr.

By Mr. CALDWELL:

1

Q. This agreement provides, in the first paragraph, for the retention of Herman Herst, Jr., as attorney for the various defendants in the actions referred to in the preamble of the agreement, and also for the retention of the firm of Kerr, Page & Cooper, as general counsel for the defendants in said actions. Do you know whether the firm of Kerr, Page & Cooper were retained as general counsel in that case? A. Yes, they were.

Q. Do you know whether this is a copy of a letter from Kerr, Page & Cooper, to Herman Herst, Jr., dated December 6th, 1904, relating to the conduct of that defense? A. Yes, that appears to be so.

2

Mr. CALDWELL: I do not want to offer that letter in evidence, Mr. Grosvenor, but I would like to ask the witness if that letter does not mention specifically Patent No. 12,192.

Mr. GROSVENOR: I object to this as an improper question, producing a paper which is a copy of a letter between attorneys, and not proving the original, and not proving anything about it, and I object to it as improper.

3

Mr. CALDWELL: I do not offer the letter in evidence.

Mr. GROSVENOR: I object to the question also.

Mr. CALDWELL: You may answer the question.

The Witness: Yes, it is the patent under which we were sued.

Mr. GROSVENOR: If you want to go into that subject properly, why don't you call the attorneys?

4

Mr. CALDWELL: We will before we get through.

By Mr. CALDWELL:

Q. You contested this suit, did you not? A. Yes, sir, we did.

Q. Do you know what was done with it? A. The suit was attended to by Kerr, Page & Cooper, who, from time to time, communicated with us, and later on I lost track of it after we had taken our license from the Edison Company—

1 Q. Did you know, or did you hear about that time that Edison had brought suits of similar character against Lubin and Selig? A. Yes, I knew of suits which had been brought against those two concerns, which was common knowledge.

Mr. GROSVENOR: I object to that question also, because too general in character, and not specifying the the dates of the suits.

Mr. CALDWELL: I said about that time.

2 Mr. GROSVENOR: About what time? You have brought him down from 1904 to the Edison license arrangement in 1908.

Mr. CALDWELL: We have proven the time by this witness, who said it was in November, 1904.

By Mr. CALDWELL:

3 Q. What effect, if any, did all this litigation have on your business? A. It prevented us from expending money in our business, in the building of factories and studios, and we did not dare to import many films at a time, and kept only a small office, trying to dispose of positives as fast as they came; also, many of our customers asked us many questions about this suit, if there was any danger in handling our films, and we had to reassure them there was not, from time to time, in order to continue our business.

Q. Subsequently, Pathe Freres entered into a license agreement with the Edison Manufacturing Company, did they not? A. They did.

4 Q. Do you know when the negotiations leading up to obtaining the Edison license were started? A. I know that the first preliminary negotiating was done at a dinner, which was at the Hotel Astor, in New York, in November, 1907, at which several of the manufacturers and importers were present, and at which one of my representatives was present. I was myself away in Venezuela at the time—

Mr. GROSVENOR: I object to the witness testifying as to anything that transpired at that dinner, and move to strike out his answer on the subject, it appearing that he was not there, and all the information he gained has been hearsay.

By Mr. CALDWELL:

1

Q. On your return from Venezuela did you take up with anyone, the matter of obtaining an Edison license? A. On my return from Venezuela my representative who was present at that time, and who had tried to reach me, or communicate with me by letter and cable, which letters and cable never did reach me, reported to me the substance of that conference at that dinner, and he told me that—

Mr. GROSVENOR: I object to that as hearsay.

2

By Mr. CALDWELL:

Q. You may go ahead, Mr. Berst. A. He told me that several of the manufacturers and importers were willing to take licenses from the Edison Company, providing I would agree to do it, and the next day, or a few days later, Mr. Moore, of the Edison Company, came into my office and told me that several of the manufacturers and importers were willing to take licenses, and that they have placed the condition that I should take one also; and he asked me if I was willing to take such a license, and he told me, in substance, what they expected, and I thereafter said, Yes, I am willing to this agreement, provided the terms were fully discussed and agreeable to me.

3

Q. What were the reasons that influenced your company to take out a license? A. My reason was to be protected under the patent, and not to be endangered by that suit, which was pending, and about which we had consulted our attorneys, Kerr, Page & Cooper, many times, and who could not give us any assurances that we could manufacture or conduct our business satisfactorily in this country.

4

Q. Had you, at that time, heard of the decision of the United States District Court, in Chicago, in the suit brought by Mr. Edison, against Selig, holding that the so-called Lumiere camera was an infringement? A. I had often heard about that—

Mr. GROSVENOR: I object to that, the decision being already in evidence, and appearing to be dated in 1910.

1 Mr. CALDWELL: I think it competent, when a witness is testifying as to the reason why he took out a license agreement, for him to state that he heard of such and such a decision, and was accordingly influenced in his action by that decision.

 Mr. GROSVENOR: But how did he hear it, when the evidence shows the decision was not filed until 1910?

 Mr. CALDWELL: I object to a statement of that kind. The decision was in November, 1907.

2 The Witness: We heard of it. It was practically all printed in the New York Clipper, approximately at that time, and that had also great bearing in our taking a license from the Edison Company, as we could not manufacture films unless infringing upon their patents.

By Mr. CALDWELL:

Q. Were you ever advised by your counsel that it would be best for your company to obtain a license from Mr. Edison? A. Yes, our counsel advised us—

3 Mr. GROSVENOR: Objected to as immaterial, and on the further ground, that if the evidence is worth anything, it should state the name of the counsel who gave the advice.

By Mr. CALDWELL:

Q. Who was the counsel, Mr. Berst? A. Our counsel was Mr. M. B. Philipp.

4 Q. Do you know who conducted the negotiations on the part of Pathe Freres, and on the part of the Edison Company, leading up to the execution of these licenses? A. Mr. M. B. Philipp conducted the negotiations on behalf of Pathe Freres, and Mr. Gilmore, and Mr. Moore, and a little later Mr. Dyer, for the Edison Company.

Q. And have you stated about when these negotiations began? A. These negotiations began in December, 1907.

Q. Do you know with what other persons license agreements were entered into about the same time under the Edison patents? A. Yes.

Q. Will you name them? A. Vitagraph Company, Gaston Melies, Selig Polyscope Company, Lubin Manufacturing Company, Essanay, Kalem, and ourselves. 1

Q. Altogether there were seven? A. Altogether there were seven.

Q. I show you Petitioner's Exhibit No. 92, which is in evidence, being the license agreement between the Edison Manufacturing Company, and the Kalem Company, dated January 31st, 1908, and ask you to look at that and see if your license was substantially the same as that agreement? A. Yes, we entered into an agreement similar to this, except that it gave us the right to import positive and negative films. 2

Q. And your agreement was executed a little later than that, was it not? A. Yes, our agreement was executed in May, 1908.

Q. And why was your agreement executed and dated after the others? A. I wanted to have that agreement translated in French, and sent to France, to be shown to some of the directors of our company who were in France, but I operated under this agreement from January 31st, the same time as the others, and paid the royalty from that date. I had in principle accepted the license, and I just wanted my Board of Directors to see it. 3

Q. After making arrangements with the Edison Company for a license did you build and equip a factory? A. Yes.

Q. Where was your factory located? A. In Bound Brook, N. J.

Q. At that time you had no studio in this country? A. No, sir.

Q. And when was it that you built your studio? A. In 1910, in the middle part of 1910. 4

Q. So, after taking a license from about January, 1908, until the middle of the year 1910, you continued to import negatives from France produced by the Compaigne Generale, and had the positives made in this country from those negatives in your factory at Bound Brook? A. Yes.

Q. But you didn't commence to produce negatives in this country until about the year 1910, when you built and equipped your studio, is that right? A. That is correct.

Q. Where is your studio located? A. In Jersey City.

1 Q. Was the amount of royalty which you were to pay the Edison Company the subject of much contention between you and the Edison Company before an agreement was finally reached?

Mr. GROSVENOR: Objected to as immaterial and incompetent.

2 The Witness: Yes, the Edison Company wanted one cent a foot royalty at the very start, and after many days of negotiations we succeeded in obtaining better terms.

Mr. GROSVENOR: I move to strike out the answer. What possible bearing can the disputes of these people as to the amount of film royalty paid have on any of the issues in this case?

Mr. CALDWELL: If counsel for petitioner cannot see the bearing it has now, we may make that quite clear to him later on.

By Mr. CALDWELL:

3 Q. Do you recall if anything was said as to the number of licenses that were to be issued? A. Yes, the number of licenses which were to be issued was limited to seven for the reason that—well it was limited to seven. That is all I want to say.

4 Q. You have already stated that after making arrangements and having obtained this license you proceeded to equip a factory in this country. Now subsequently have you made any additional betterments or improvements in the way of factory and studio or equipment in this country? A. Well, yes, first, as I stated before, we built a studio which was quite expensive and cost us a lot of money, and second, we imported some machinery for manufacturing, and we equipped a plant for coloring film by means of stencils, which machinery was very expensive.

Q. Do you recall whether there was any discussion at the time as to the purpose of the requirement of the license agreement as to the return of film after six months?

Mr. GROSVENOR: Are you referring to the Edison license?

Mr. CALDWELL: I refer now to the Edison licenses.

The Witness: Yes, there were in the licenses the requirement for the return of film to the manufacturer six months after it had been released, or, at least an equivalent amount to what had been released the six months prior.

Q. Do you know whether there was any objection on the part of any of the licensees to that provision of the license agreement? A. No, there was no objection on the part of the licensees.

Q. What was said, if anything, as to the reasons for that requirement? A. The reason for the requirement of the return of the film was that in the country all over, the exchanges which were renting the film to the exhibitors were supplying these customers with films which had been used for a long time, films which were badly damaged and torn, and which were a detriment to the business in general.

Q. At the time this license agreement was signed you had been in business in this country, in the motion picture business about four years or nearly four years. What had been your experience in your business as to the exhibition of film after it had been in use for several months? A. I have seen some pictures of my own on which I could not even recognize the subject—there was on the film practically no gelatine left, it was just a piece of white film passing on the screen, and you could see nothing, and this happened frequently, and although I notified our customers of that fact it didn't seem to remedy it. Some of these pictures had many scratches, and a part of them had been cut off, disconnecting the stories, and by requesting the return of film it was thought that it would bring an end to this deplorable condition.

Q. I call your attention to Paragraph 7 of the Edison license agreement, which requires that the licensee shall mark conspicuously on the labels, which shall be placed on the boxes or packages containing motion picture film, certain terms and conditions of sale. Can you state whether the labels on all the boxes containing motion picture films turned out by Pathe Freres after the date of this license

1 and prior to the issuance of the license by the Patents Company, contained the labels giving the notice required by that paragraph. A. Yes, all of them.

Q. As far as you know, did all the boxes containing motion pictures manufactured by the other Edison licensees at that time contain labels with that notice? A. Yes, I have seen these boxes in the exchanges which I have visited from time to time, and I noticed that all the boxes containing film of my competitors had similar labels.

2 Q. After taking this license from the Edison Company were you interfered with in your business in any way by suits brought by the Biograph Company under its patents? A. Not directly.

Q. Were you indirectly?

Mr. GROSVENOR: Question objected to, as leading.

The Witness: Yes. The Armat Company notified us by letter once, and possibly twice—

3 Mr. GROSVENOR: Let's have the letter—I object to the contents of the letter. Let us have the letter and its date.

4 The Witness: That we were infringing on its patents, and that we should discontinue, and also at the same time the Biograph and Armat Companies had brought suit against seven exhibitors, and that created quite some unrest in the trade in general. They always claimed that the Latham patent would stop everybody from exhibiting pictures on machines which were not licensed by them, and I have taken means to reassure many of our customers and tell them that they should defend this suit. and I published, even, articles in the trade papers, informing the trade in general that the Latham patent was of no value; that we knew of other means to project films without infringing on their patents, and that when the time came we would use those means, but, in fact, I knew very well it was not true. I knew that the Latham patent was a very strong patent, and when I was telling my customers that these patents were not true, I at the same time requested the Compagnie Generale in France to make—

Mr. GROSVENOR: I object to his stating what he may have written to his head offices. Let him produce the letters, and we can then determine whether or not they are relevant; but for him to state the contents of correspondence violates all the elementary rules of evidence. 1

Mr. CALDWELL: I think that the witness heard, and as a result of what he heard, he took certain action; that is competent to bring out by the witness. You may continue.

A. To make an investigation in Europe to find anything which would give priority to the Latham patent, and after possibly two or three months, I received an answer, telling me— 2

Mr. GROSVENOR: I object to his stating the contents of the answer, also. Let him produce the originals.

By Mr. CALDWELL:

Q. Have you got the original of that letter to which you refer? A. Probably in the files. 3

Mr. GROSVENOR: Have you any copy of it?

The Witness: Not with me.

Mr. GROSVENOR: I object to his statement.

By Mr. CALDWELL:

Q. Proceed. A. Will you give me the last words of my answer? I have been interrupted. 4

The Examiner repeats the answer to the witness.

The Witness: That they had not found anything prior to the patents, and that confirmed me that the patent was very important.

By Mr. CALDWELL:

Q. Did you communicate with the officers of the Com-

1 pagnie Generale in Paris about the difficulties which you
were having in your business in this country over the
Latham patent?

Mr. GROSVENOR: Objected to as leading, no difficulties having been shown.

2 The Witness: Yes, sir. I notified them several times
of the attitude of the Biograph and Armat Company and
the threats they were making upon the trade in general,
and on the effect it had on our business.

By Mr. CALDWELL:

Q. Were you able to get anything different from the
Compagnie Generale on that subject other than what you
have already stated, in the way of finding something to
oppose the Latham patent, or take its place? A. There
was never anything to take the place of the Latham patent,
which was practical, and which would render the same
service. The only device I knew was a very crude device
3 which could dispense with the Latham patent, but would
permit to project only a film which was about no more than
a hundred feet, and in those days we were using already
very long films, consequently the device would have been
of no use.

Q. Do you recall, Mr. Berst, whether the Armat Company
circularized the exhibitors about that time, that is,
during the year 1908, after you became an Edison licensee,
with notices warning them that those exhibitors who were
using the Edison licensed pictures were infringing the Armat
patents, and that they would proceed against them? A. Yes,
4 I had several of those notices in my hand, which
were brought by some of my customers, and they asked me
my opinion as to it. I told them not to pay any attention
to it, that there was nothing in it. I had to conduct my
business, and I tried to do the best that I could.

Q. In point of fact, though, you were afraid of the
Latham patent? A. I have always been afraid of the Latham
patents, especially after we became licensees of the Edison
Company, because before the Armat Company—they had sent out
one letter to us and we did not pay very much attention, but
when they became either associated or

working with the Biograph Company, they became very active. They sent one letter to us prior to our becoming licensees of the Edison Company. 1

Q. Did Pathe Freres ever manufacture projecting machines in this country? A. No, sir, it imported machines and had a machine manufactured for it by others.

Q. In France? A. In this country.

Q. Was it a matter of common knowledge in 1908 in the business, that the Armat Company and the Biograph Company were threatening to bring suits against the Edison Company and its licensees? A. Yes, it was common knowledge. They had circularized the trade to that effect. 2

Mr. GROSVENOR: This was all after the formation of the Edison licensees?

The Witness: Yes, sir.

By Mr. CALDWELL:

Q. You knew that litigation was then pending between the Edison Company and the Biograph Company, did you not? A. Yes, sir. 3

Q. Do you remember reading about any of this litigation in the trade journals or papers at that time? A. Yes. It was published in the trade papers. I believe in the New York Clipper.

Q. What effect did all this litigation and threats of litigation have upon the motion picture business in 1908? A. It created unrest among the exhibitors who did not know what to do. They were threatened to be in violation of the patents if they used film made under the Edison license, and on the other hand, there were not enough films made by the Biograph Company or its licensees to cover the business, and they did not know where they would stand. 4

Q. Then were business conditions at that time settled or very much unsettled? A. It was very much unsettled.

Q. Did you regard the business as stable at that time? A. No, we regarded the business as very unstable and thought that it was very desirable that the Edison and the Biograph companies make peace.

Q. Were you at that time contemplating making any

1 further investments in your business, such as the building and equipment of a studio at which you could produce pictures in this country, as well as import them? A. We had in mind to build a studio when the condition would be settled, but not before, because we had already enough money invested in this country, probably we figured even too much, on account of this unsettled condition.

Q. In point of fact, you did not build and equip your studio until after you obtained a license from the Motion Picture Patents Company, did you? A. No, sir.

2 Mr. GROSVENOR: I object to all this testimony and all these questions on the same ground as heretofore stated, that they are all misleading, being general and not giving specific dates, this witness having already testified that the studio was built in 1910.

Mr. CALDWELL: I have tried to make it appear, and I think the witness perfectly understands, that my questions were directed to conditions existing in 1908, and I do not see how in point of time they can be any more specific than that.

3

By Mr. CALDWELL:

Q. Can you state the aggregate amount of royalties which you paid the Edison Company under your agreement with the Edison Company? A. Between seventeen and eighteen thousand dollars.

Q. During the year 1908? A. During the year 1908.

4 Q. What were the considerations which influenced you to accept a license from the Motion Picture Patents Company? A. The main consideration was to obtain a license under the Latham patent, and see the war between the Edison Company licensees and the Biograph Company licensees at an end, in order that peace could be restored, and that we could manufacture and extend our business in a safe way.

Q. Did you have anything to do with the organization of the Patents Company? A. No, sir.

Q. Either individually, or as an officer of Pathe Freres? A. No, sir.

Q. Did you, or Pathe Freres, own any stock in the Patents Company? A. No, sir. 1

Q. Or contemplate obtaining any stock? A. No.

Q. Did you assign any patents to the Patents Company? A. No, sir.

Q. Did you have any representation on its Board of Directors? A. No, sir.

Q. Read Paragraph 20, please, of the Edison license agreement attached to the answer of the Edison Company, being Petitioner's Exhibit 92. I call your attention to a provision contained in Paragraph 20 of your agreement with the Edison Company, to the effect that the Edison Company would not grant another license upon terms, conditions or stipulations, which are in any respect more favorable to the licensee named therein than what is set forth in your agreement, also, the provision contained in the same paragraph, which limits the total number of licenses to be granted by the Edison Company, to seven; further providing, that no additional licenses may be granted without a plurality vote of the licensor and all the licensees, on the basis of one vote for each one thousand feet of new subjects placed on sale in the sales territory. Was the fact that the number of licenses was limited, and that no other license could be granted upon more favorable terms than your own license, a consideration inducing you to pay the rate of film royalty which you did agree to pay? A. It was one of the considerations. 2 3

Q. If the number of licenses had been less than seven, would you have been willing to pay a greater royalty? A. We would have been willing to pay a greater royalty.

Mr. GROSVENOR: I object to this as immaterial, all this line of talk. 4

By Mr. CALDWELL:

Q. Then, when the Patents Company subsequently offered you a license under both the Edison patents and the other patents held by it, you were vitally interested, were you not, as an Edison licensee, in the number and character of the licenses to be issued by the Patents Company?

Mr. GROSVENOR: Objected to as leading.

1 A. Yes, vitally interested.

Q. Did you have any other interest or concern, in the organization of the Patents Company, than your desire to terminate the litigation and to obtain licenses under both the Edison patents and the patents owned by the Biograph Company, and the Armat Company? A. No. No more than what I said before.

Q. During the year 1908, were the Edison licensees in competition as between themselves? A. Yes, very much.

2 Q. If they lived up to the schedule of minimum prices set forth in the license agreement, in what respects were they competing? A. Principally in the quality of the film they were putting on the market, also, in advertising, and in having better actors, better settings, better scenarios, pay more than his competitor could pay, and from time to time, steal his employees.

3 Q. After the formation of the Patents Company, were the licensees of the Patents Company competing between themselves? A. Yes, very much. To the same extent. I recall that the Lubin Company took away a very valuable man which I had, and before, the Lubin Company could hardly make anything, and after that time, they became a very important factor, and Mr. Lubin acknowledged himself, that it was due to that man. I had a scrap with him on this subject.

Q. Are the Patents Company licensees competing with any other producers and importers of motion pictures? A. Yes, they are competing with the unlicensed manufacturers; and also, with the licensed manufacturers and importers.

Q. And were they so competing in August, 1912, when the petition in this case was filed? A. Just the same at that time as before, and now.

4 Q. And is that competition formidable and extensive? A. Very extensive.

Q. Do you know who those competitors are? A. Licensed?

Q. No, among the unlicensed? A. In what year?

Q. At the present time. A. There are so many, that I cannot name them all.

Q. Name the principal ones. A. The Reliance, Thanhouser, Bison, Rex, Famous Players, Warner Features, Majestic, Victor, Helen Gardner Company, Kay-Bee, Keystone,

Great Northern, Eclectic, Broncho, Annex, Balboa Amusement Company, Imp, Eclair, Gaumont, Lux, Ambrosio, Italia, Milano—

1

Mr. GROSVENOR: These are importations, these last ones?

The Witness: Some of them are importers, and most of them are manufacturers, but they are competitors.

By Mr. CALDWELL:

2

Q. The only importers are the last three you have named? A. I think there are about four, which are importers. There is more than that. I do not recall the names of all.

Q. Has there been a tendency within the last year or two for these so-called independent producers and importers to ally themselves in groups, for the production and distribution of motion pictures?

Mr. GROSVENOR: Objected to as immaterial.

3

The Witness: Yes, they have formed three groups. One is the Mutual, one is the Universal, and the other the Film Supply.

Q. And is there much competition at the present time between the licensed importers and producers, and men who make a specialty of handling special feature films? A. Yes, the special feature film is a new development of the business. It dates its important date from about the last twelve months, and there is a large competition, due to that fact, among the importers and makers of feature film and the licensed manufacturers.

4

Q. Has there been much increase in the cost of negative production since you took out a license from the Patents Company? A. Very large increase.

Q. And what are the factors that enter into this increase in the cost of negative production? A. The factors which tend to make those increases are the higher cost of actors and actresses, camera men, directors, scenic artists, and the more care we take in making pictures. Also, now, we generally make two negatives instead of one, thus doubling the expense

- 1 in the raw stock. By raw stock, I mean the negative blank film, and necessitating one more camera and one more camera man. These are the main factors.

Mr. GROSVENOR: All of which is objected to, all this line of questioning, on the grounds heretofore stated, immateriality and irrelevancy.

By Mr. CALDWELL:

- 2 Q. Has there been much increase in the salaries paid to artists? A. Yes.

Mr. GROSVENOR: This immaterial subject has already been gone into several times with other witnesses, and I must enter earnest objection to littering up the record, again.

Mr. CALDWELL: This witness, as a defendant in this case, has a perfect right to describe the business which he is conducting, and which this petition charges him, together with others, in restraining and monopolizing.

- 3 Mr. GROSVENOR: He is ruled by the rules of evidence which govern every other defendant and witness.

Mr. CALDWELL: He is giving his personal experience in the business.

By Mr. CALDWELL:

Q. Now, will you proceed? A. Will you read the last question?

The Examiner repeats the question as follows:

- 4 "Q. Has there been much increase in the salaries paid to artists?"

A. Yes. The salaries of actors and actresses is about three to four times more than what it used to be at the time of the formation of the Patents Company.

By Mr. CALDWELL:

Q. How about directors? A. Directors have increased

in the same proportion. We used to pay for a director \$60 to \$75 a week, and now we pay from \$175 to \$200.

Q. And how about the cost of scenarios? A. Scenarios have increased also, because we want better quality of scenarios. We used to pay about an average of \$25 per scenario, and now we pay just as high as \$200, and we are even willing to pay even up to \$2,000 for copyrighted plays if they are famous or well known, at least.

Q. Does Pathe Freres maintain a large company of actors and actresses? A. Yes, a rather large company.

Q. What is the size of that company? A. We have always about 200 actors and actresses on our payroll.

Q. In 1910, when you first equipped your studio, what size company did you maintain? A. About twenty people. I mean, twenty actors and actresses.

Q. Is a very large part of the pictures produced in this country and imported by Pathe Freres from abroad, made up of purely theatrical subjects, such as dramas and comedies? A. About eighty to eighty-five per cent.

Q. Will you name some of the picture plays which you have either produced or imported, involving unusual negative cost? A. La Tosca.

Q. Where was that produced? A. Produced in Paris.

Q. By the Compagnie Generale? A. Yes.

Q. And what company of actors was employed in that? A. We employed in that picture the best talent possible to obtain in France, members of the Comedie Francaise, of Paris.

Q. Is that a well-known company in Europe? A. Probably the best-known company in Europe. It was formed in 1500, about.

Q. Is that the company that was organized in the reign of Louis XIV, at the time of Cardinal Richelieu? A. Yes, sir.

Mr. GROSVENOR: Now, I must insist that the defendants are going too far back when they go back to Cardinal Richelieu. They are insisting upon violating all the rules of evidence, abusing the freedom which the rules of equity allow. I press my objection once more.

1

Mr. CALDWELL: We insist that the purpose of this line of questioning is to show the character of the pictures that are produced in this country by these defendants, who are charged in this bill with monopolizing the business and stifling competition.

Mr. GROSVENOR: We do not charge you with producing impure pictures, but we charge you with monopolizing.

2

Mr. CALDWELL: And by showing that the pictures that are produced, the plays that are produced, are the result of performances given, some of them by the leading actors and actresses in the world, that is the object of this testimony. Now, you may proceed, Mr. Berst.

Mr. GROSVENOR: What does that have to do, that they are performed by these actors and actresses, with the charge of monopoly? It might be on the question whether the pictures are good or bad pictures, but that is not the issue here.

3

Q. Can you name some pictures of a similar character that you have either imported or produced in this country, involving great negative cost or display, having especially artistic merit? A. Yes. We imported the Assassination of Duc de Guise, the Return of Ulysses, Othello, the Black Countess, Cleopatra.

Q. Mr. Berst, what part, if any, did you take in the organization of the General Film Company? A. I was one of the organizers of the company. I went to Portland with some other gentlemen to organize that company, in April—I believe in April, 1910, or around that time.

4

Q. When was the project of organizing a rental agency of licensed producers first discussed, so far as you know? A. I cannot say when it was first discussed. This matter was talked over two or three months prior to the organization, at different times. It was talked informally between manufacturers or importers after meetings or social interviews.

Q. Did you hear of any such discussion prior to about January, 1910? A. No, sir. Excuse me, I want to correct

my answer there. The first time I heard of it was in December, 1909, at a banquet which I attended, given by the Motion Picture Patents Company to its licensees, on the anniversary of its organization. 1

Q. Were you in favor of organizing a rental agency at first? A. No, I did not think it was a good plan.

Q. Why not? A. I thought organizing one exchange would be just one more in the business, and I did not see at the time what benefit we could derive by that.

Q. Why did you conclude to join in the organization of the General Film Company? A. Later on, when it was more discussed, I saw more possibilities in it, and I took a chance like you do in many other things. 2

Q. Were you satisfied with the way in which the exchange business was then being conducted by the licensed exchanges?

Mr. GROSVENOR: I object to this as irrelevant.

The Witness: No. We were rather dissatisfied. Many of these exchanges were very troublesome factors. They did not pay their bills promptly. We had sometimes to extend credit or send goods C. O. D., and the C. O. D.'s sometimes were refused. We had film returned to us after sometimes two weeks, and the films were absolutely lost, because we could not sell them again, as they would be old—and also the exchanges did not give proper service to their customers. Several I know had contracts with their exhibitors and the exhibitors frequently told me that they could not obtain satisfaction from their exchange. They had contracts from these exchanges to receive film of a certain age, and they were receiving film much older. If they changed and went to another exchange, the situation was no better. They had lots of promise, and that is all. Many of these exchanges were interested in theatres, and they were giving better service to their theatres, in order to drive the business and the money to them, and I know of many practices which were done to ruin a theatre, in order to get hold of its business. These were generally the objectionable things that were in the business at the time. 3 4

1 Mr. GROSVENOR: I object to all this answer as immaterial and furnishing no ground or excuse for this defendant or the other defendants to get hold of the business of these exchanges.

By Mr. CALDWELL:

Q. When the General Film Company was formed, was it the purpose of its organizers to acquire all the existing licensed rental exchanges in the United States? A. No; when the General Film Company was formed, the organizers at the time did not know what they were going to do. The only thing they knew was that they were going to go into the exchange business. They did not know much more. They thought that they could acquire one or two exchanges, buy films, and open some more exchanges, and it was hardly thought that we could buy other exchanges. The idea was to build an exchange and not to buy the present exchanges.

Q. Can you explain how it was that the General Film Company did acquire nearly all the existing licensed rental exchanges? How was that brought about? A. First the officers of the General Film Company sent a telegram to Mr. Howard of Boston, to come to New York, and he came, and he was received by the Board of Directors, and he was asked if he would sell his business. He said yes, if the terms were satisfactory. The terms were given to him immediately, and he answered that he was glad to accept them. That was the first exchange acquired. Then it was not sufficient, and we went to the Kinetograph Company. I went to the Kinetograph Company, and asked the proprietor, Mr. P. L. Waters, if he would sell his exchange. He said yes. I discussed the terms with him, and he accepted. That was all the exchanges we had. Immediately after, how long I don't remember, but no more than one week or two, we had offers from others to sell their business. I must say that we had a promise from Mr. Kleine to sell all his business to the General Film Company, and he had several branches. And that is the only two exchanges which I have mentioned, Howard and the Kinetograph, to whom we made an offer. To the others, we never

even telephoned, wired, wrote or sent a representative to acquire their business. They all came to us and asked if they were going to be bought out. We always answered, "We don't know. Are you a man that wants to sell?" They said yes. I said, "All right, sit down." And Mr. Kennedy, who was President of the company, made terms to them. Of course, it took some time, a long time, before they could arrive at a conclusion, and when they had agreed to everything, an agreement was drawn by Mr. Kennedy, and the exchange turned over to us its property.

Q. State what you had to do with the purchases of the exchanges after the first two or three were bought, as a member of the Executive Committee? A. I had not a very active part in buying of exchanges. This business was handled by Mr. Kennedy as chairman of the Executive Committee. I happened to be there several times in the office of the company, and while he was buying, the people who came to him possibly met me also, when I was there, and he told me what was the business which was going on, and he consulted me, but I believe more for the form and courtesy than for a matter of business, because he had bought many without me being present. We always left that matter to him entirely.

Q. Did you have anything to do with the preparation of any alleged schedule of prices to be paid for exchanges? A. I never had anything to do with the schedule of prices to be paid for exchanges.

Q. Did you know anything about such a schedule? A. I never knew anything about it except what was told me or asked me by counsel for the complainant in the Greater New York case.

Q. By the "Greater New York case" you refer to a suit brought by the Greater New York Film Rental Company against the Biograph Company and the General Film Company in the United States District Court for this district? A. Yes, sir.

Q. Who was it—what counsel examined you in that suit on behalf of the complainant? A. Mr. Rogers.

Q. Do you see Mr. Rogers sitting in the room here to-day? A. Yes, sir, he is here. Near Mr. Grosvenor.

1 Mr. GROSVENOR: You mean he is sitting near me?
You don't mean that I was at your other examination?

The Witness: No, sir.

By Mr. CALDWELL:

Q. You mean the gentleman that usually sits on the right hand of the counsel's table here, near Mr. Grosvenor, on the same side of the table? A. He is counsel for the
2 complainant in the Greater New York case, which I referred to in my previous answer.

Q. Did the General Film Company have anything to do whatever, with the cancellation of an exchange license? A. Never had anything to do, to my knowledge.

Q. During the period which we are now referring to, you were a Director of the General Film Company, and a member of the Executive Committee. Now, did you, as an officer or Director of the General Film Company, ever attempt to influence the Patents Company to cancel a license of an exchange in order to enable the General Film Com-
3 pany to buy it? A. No, sir.

Q. After the organization of the Patents Company, was there ever, at any time, any agreement or understanding between the licensed producers and importers, by which they would limit the number of pictures that they would produce each week? A. No, sir. Every licensed manufacturer was free to place on the market any amount of film he should see fit.

Q. Can you state the number of weekly releases that Pathe Freres turned out in 1909, shortly after the beginning of the Patents Company? A. Pathe Freres issued, in 1909,
4 an average, weekly, of four reels, of one thousand feet, a week; and in 1911, five reels; and at the end of 1911, six reels; and now, it is issuing eight reels.

Q. Do you know a man by the name of Lodge, who testified in this case as a witness on behalf of the petitioner? A. I met him two or three times, yes.

Q. When did you meet him for the first time? A. I met him the first time, the day we signed our licenses at the

Patents Company. It was at a meeting—I don't remember the date. The date of the license would tell, anyway. 1

Mr. CALDWELL: There is no objection to my refreshing the witness' memory there, is there, Mr. Grosvenor, by calling his attention to the fact that the evidence shows that that date was December 18th, 1908?

Mr. GROSVENOR: That is agreeable to me.

By Mr. CALDWELL: 2

Q. Do you recall seeing Mr. Lodge at that meeting? A. Yes, sir.

Q. For the first time? A. For the first time.

Q. Now, Mr. Lodge has stated that at that meeting the manufacturers discussed, among themselves, the project of organizing a film rental company. Did you hear any such discussion at that meeting? A. No, sir. The meeting was taken up by the lecture and discussion of the license agreement.

Q. By lecture, you mean the reading? A. Yes, reading and discussing of the agreement, which was a very long document, and when we were through with that, the business was finished, and we never discussed with Mr. Lodge the purpose of establishing a rental agency. I know that, for myself, I never had any such idea, in those days. 3

Q. Lodge has testified that at this meeting of December 18th, 1908, he had a discussion with you—he mentions your name—to the effect that the manufacturers were going to get up a gigantic fund in order to prosecute infringers and monopolize business. Did you have any such conversation with Mr. Lodge? A. No, sir. In signing that license, we agreed to pay a royalty, and that was enough. We did not think—we would not think of contributing to a fund. The license speaks for itself, and it says that the licensor had to prosecute the infringers at its own cost, and there was not one single manufacturer who would have been willing to pay more money. 4

Q. Did you make any such statement to Mr. Lodge? A. No, sir; I did not.

1 Q. He has also testified that he had a discussion with you and some other manufacturers at that meeting, to the effect that these agreements, these license agreements that they were about to execute, would bring about a complete monopoly of all the branches of the business in this country. Did you have any such discussion with Mr. Lodge as that?
A. Not to my recollection.

2 Q. Did you tell him that these agreements would bring about a complete monopoly of all the business of the country? A. Not to my recollection. I never had such a talk with him, on this matter.

Whereupon, at 4:30 P. M., on this Tuesday, the 18th day of November, 1913, the hearings are adjourned until Wednesday, the 19th day of November, 1913, at 10:30 o'clock A. M., at the Hotel Manhattan, New York City.

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IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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<p>UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>v</i></p> <p>MOTION PICTURE PATENTS CO. and others, Defendants.</p>	}	<p>No. 889. Sept. Sess., 1912.</p>
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NEW YORK CITY, November 19, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 19, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY, GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin and Armat Moving Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq., appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Pathe Freres, Frank L. Dyer, Samuel Long and J. A. Berst.

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Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

- 1 Thereupon JONAS A. KOERPEL, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. What is your business, Mr. Koerpel? A. I am in the business of exhibiting motion pictures.

Q. How long have you been in that business? A. Since the early part of 1906.

- 2 Q. Are you the owner of a theatre, or the manager of one? A. I own seventy per cent. interest in one.

Q. Where is the theatre located? A. At 157th Street and Amsterdam Avenue.

Q. What is the capacity of that theatre? A. Four hundred and twenty-five.

Q. What is the name of it? A. The Palace.

Q. Are you interested in any other theatre? A. I also have a half interest in the Riverview Airdome, at 151st Street and Broadway.

Q. What is the capacity of that? A. Fourteen hundred.

- 3 Q. Are those the only two theatres in which you are interested? A. At the present time, yes.

Q. Have you been interested in other theatres, or the management of other theatres, prior to these two? A. Yes.

Q. Will you tell us what they were? A. The Peerless Theatre, at 138th Street and Alexander Avenue, the Empire at 73 Westchester Square, and the Pleasant Hour, at 715 Westchester Avenue.

Q. When did you begin business, Mr. Koerpel? A. About the latter part of 1906.

Q. As an exhibitor? A. As an exhibitor.

- 4 Q. Where did you obtain motion pictures for exhibition purposes in 1906? A. At the Vitagraph Company of America, 116 Nassau Street, New York City.

Q. Since the formation of the Patents Company in December, 1908, have you used licensed or unlicensed motion pictures? A. Well, we have used both, but mostly licensed.

Q. Practically all licensed? A. Practically all licensed.

Q. Is your theatre a licensed theatre? A. I use the licensed films in it.

Q. What projecting machine do you use in your theatre? A. A Powers 6-A. 1

Q. And has that been the type of projecting machine used most of the time by you? A. I never have used any other machine but a Powers.

Q. I will ask you to tell us what a conflicting service is, and then tell us what is the desirability of having a non-conflicting service? A. Well, a conflicting service, to my mind, would be the use of the programs of the same manufacturer in two theatres, which were in opposition to each other that were using these reels without having them booked according to the opposition that they bear to each other. In other words, if I were to book a picture, we will say Kalem's, "Our New Minister," and I was not protected on that particular subject, well, after I had spent quite some time and money advertising it for two or three days, my opposition would wait until the day before I run it, and would get that very picture and run it if he was not prohibited in some way from getting the film or picture. 2

Q. Now, by "your opposition" you mean the theatres in your immediate neighborhood who are in the motion picture exhibiting business? A. Well, motion picture and vaudeville theatres. 3

Q. By "opposition" do you also mean your competitors in the neighborhood who are catering to practically the same patronage, and drawing practically the same crowds? A. Surely.

Q. What is the effect of conflicting programs on your business, such as you have described? A. Well, I should say while it is a very hard thing, I would be safe in saying this, if it was possible for that to occur, and it has occurred, of course, my daily receipts would be diminished at least fifty per cent., at the very least 4

Q. So that you have found that conflicting programs directly and materially affect your cash receipts? A. Yes, sir.

Q. Would you say that it is one of the essentials in a successful motion picture business that you have a non-conflicting program? A. Absolutely.

Q. Do you find it desirable or profitable to be able to advertise a definite program in advance? A. Very muchly. I know that only too well. Prior to the formation or the

1 existence of the General Film Company or the Motion Picture Patents Company we never had any program. In other words, we never knew what we were going to get. When an exhibitor got ready to open up a theatre he went to a film exchange, and the film exchange, the first question they would ask would be, "Well, how much money do you want to spend for films?" And he would say, "Well, I want to spend seventy or seventy-five dollars for service." "Well, all right; we will give you a very good service for that." "Well, what do I get?" "Well, we can't tell offhand what you are going to get. We can't tell you, for these films are working all the time. We will give you a very good service." And they gave it to you, what you thought was a good service, but whether it was good or not you had no way of telling, because you never knew anything regarding the age of the film that you were getting, and you never knew what you were going to have the next day; and it got so that in order to have a good show you simply had to go around to the back room where the man was who was called a "booker," and whoever paid him the most money, why, he got the best show.

2
3 Q. In other words, you found it necessary to go to the rental exchange, and talk with the man who had charge of the films, or who was giving them out? A. You had to bribe them.

Q. When was it that a definite program became possible? A. We never had any program until after there was a General Film Company, and that was shortly after the fire that occurred in the Vitagraph Company, in the Morton Building, in Nassau Street, and then we were informed that we would get our films at 19 East 21st Street.

Q. You had been a customer, then, of the Vitagraph Company's branch in Nassau Street? A. Yes, sir.

4 Q. Now, after you went to the 21st Street office, did you find it possible then to have or get a program? A. We got programs very shortly afterwards. We were told what age reels we would have, and we were told what makes we would have on certain days. In other words, our shows were scheduled. We would get, for example, if we were to have a seven-day reel on Thursday, why, we would get the release of, say, the Vitagraph Company of one week before. In other words, we got Thursday's Vitagraph on Thursday, and if we had a ten-day reel on that program we would get Saturday's Vitagraph on the Saturday before that Thursday,

making it ten days old, or whatever their manufacture may be. 1

Q. Were these programs carefully selected? A. Well, they were fairly well balanced, and if an exhibitor, after he got his program, wanted to change a reel, and wanted something else, and it was not scheduled or booked to some other exhibitor, they would change it, because he had his programs always two or three or four days ahead, and he always had enough time to change a reel.

Q. Will you tell us what you mean by the statement that the program was "well balanced?" A. Well, this—for instance, we would have five dramas, or five comedies, or five Westerners, or three scenics, or travelogues, and if, according to the schedule, these pictures did fall to you, why, you could take your program as we do today, and take it to either the manager of the exchange or the booker, and say, "Now, here, we have too much Western on here, or too much drama, or too much comedy," and have them balance it for you, so you will have a little something of everything in your program to please your audiences. 2

Q. Do you find it desirable as an exhibitor to select specific pictures for your program? A. Oh, surely. 3

Q. And do you do that? A. Yes, sir.

Q. Will you tell us to what extent you do that, and how you make up your program? A. Yes, sir; I permit the General Film Company to schedule or to send me on the first three reels in their releases the three newest reels on my program, according to the age that I am entitled to, leaving three reels, so-called commercials, open, and I would go to the booker, and I would tell him what I wanted on these last three reels, and he gives them to me; that is, of course, if they are open. And I generally have a list large enough to select from, so that I can always get some three reels that I want. 4

Q. And do you usually get the service you want? A. Yes, sir. Of course, there are instances when the operator or reel boy who handles these reels and gets them ready to go up to the show, there may have been some customer who had this show, or the reels, the day before, and he might be from Long Island or New Jersey, or Connecticut, who has

1 not got in yet, or has missed his train, or something, and then it is necessary to change a reel.

Q. You say that a certain number of motion pictures are scheduled on your program? A. Yes, sir.

Q. Do you know what they are going to be? A. Yes, sir.

2 Q. How do you know that? A. Well, they agree to give me an Edison reel, when it is a certain number of days old, or a Vitagraph, when it is a certain number of days old, and so on. In other words, I now have Pathe's Weekly every Saturday. That is Pathe's release of Monday of the same week, and that I have as sure as the Lord made green apples, every
3 Saturday, unless it burns up, or something like that, but I have never missed it once, and my audiences know every Saturday that they will see Pathe's Weekly.

Q. Do you know, yourself, what the title and description of the pictures are that are scheduled? A. Yes, sir.

Q. And how? A. The General Film Company gives us books with the release numbers in them, and the date of the release, the name of the subject, and the manufacturer, and whether it is a comedy or a drama.

3 Q. And can you get the story from the manufacturers' description? A. All of the manufacturers, separately, send us bulletins, and all the manufacturers are advertising their films. Now, when Selig, for example, gets ready to release a Western Special, or some other special, about one week before, they send out a lot of advertising matter, giving a synopsis of the story, and sample heralds can be bought for so much per thousand, urging you to book it at your exchange, whatever branch it may be, of the General Film Exchange.

4 Q. Are the manufacturers constantly sending you circular letters and pamphlets? A. Yes, sir, in every mail every day we get slews of them.

Q. From the licensed manufacturers? A. Yes, sir.

O. You speak of heralds. What are heralds? A. They are a well-gotten up sort of a circular that is folded, or folds, and contains a synopsis of the story, and the cast, the actors and the actresses and scenes, and which are not just merely drawn, but stills made from cuts, photographs of some situation in the story.

Q. Would you rather say "still photographs" or pictures there, instead of "stills"? A. Yes, sir. I mean that when they are making the pictures, and there is a good

situation, why, they stop the actors and actresses, and they make a still photograph of it, and then they use that in this advertising matter in the heralds. 1

Q. And these heralds, do you have them reproduced, or do they furnish them to you? A. Yes, sir, they supply them at so much per thousand.

Q. Do they supply you with posters, or other advertising matter? A. We get our posters from the General Film Company's Poster Department. And speaking of posters, why, previously we had to use what was called a "fake poster." It was necessary for the exhibitor to take any old kind of a poster that had nothing to do with the film, or the subject at all, and across the top of it, if it was a western picture, he would simply get a picture of a cow-boy with a horse and a rope, and then he would put the title of the picture across it. In other words, we were compelled to use posters which had no bearing whatsoever on the subject, and the result was that, due to the fact that a large number of people who got into this business when they ought to be doing something else, why they had posters out in front showing somebody striking somebody else in the back with a knife, and it created an idea that a motion picture theatre probably was a den of iniquity and vice, and they would go inside and expect to see that on this screen, and it would have nothing to do with the picture, but, of course, today, since the advent of the General Film Company and the Patents Company, our posters are representative of the pictures. In other words, they contain an actual scene from the play, and the people know just exactly what they are going to see. I do not believe that there is any theatre in the City of New York today using so-called "fake" posters; they use legitimate posters. 2 3

Q. Did you have, at any time in your business experience as a motion picture exhibitor, any experience with worn or damaged film? A. Well, our films never were taken care of before the present exchanges existed, or before the General Film Company. I can only speak of the General Film Company, because I have previously always used their service, and I suppose that other exchanges have advanced just as much, but previously the films were never examined. For example, when we were getting our films in Nassau Street, from the Vitagraph Company, we even had 4

1 to rewind our films when we got them up to the theatre. We had to take them just as some exhibitor had brought them back. They never kept a night force to clean the reels, and examine them.

Q. What has been your experience with respect to the influence on audiences of running old pictures? A. Why, some of the audiences today know more about films and their condition than some of the exhibitors. You see, the conditions today are greatly advanced. They can go to a newsstand and buy for ten or fifteen cents the motion picture trade magazines, and they know all about the release
2 dates and get a copy of the synopsis, and they would come out and tell you you had a commercial film, when formerly they used to think the dirt on the film was rain, and they would come out and tell you it was raining when you took that picture, but they know today it is dirt that has accumulated on the film, from the fact that the films have not been cleaned, and are old and have been used a lot.

Q. Does old film give a rain-storm effect, owing to the dirt and scratches? A. Yes, sir, if they are not cleaned. It is possible to clean them to a great extent, and I have cleaned
3 them myself.

Q. Are old and worn films constantly being shortened because of the damaged places that are cut out? A. In some of them the stories are very disconnected and it is very undesirable to put them on the screen, if you know it beforehand, naturally.

Q. In carrying on competition with your competitors, are you alert to get a better service than the others? A. What do you mean by a "better service"?

Q. Well, do you try to get a different service, or one that is an improvement on what your competitors are showing?
4 A. Well, as far as the service is concerned, why, the prices of our programs are based, of course, upon the age of the reels, we have to pay as much for a poorly acted picture as we do for the best acted picture, and therefore, the only thing that is to be done is to endeavor to pick your pictures separately from your opposition. I don't think it is possible to keep a house away absolutely on the single reels, in fact, I have never tried that.

Q. What do you mean by "keeping them away"? A. Well, now, as I explained before, if I had a feature, and had

advertised it, I would want some protection on it, but I don't think that it would be possible to obtain a program from any film exchange, and have them give you reels that another man had not had, because there are only about forty-two reels released per week, and if a house is using six reels a day, that is forty-two reels right there, so he must use everything, and he must use something, therefore, that the other fellow has had at some time also. 1

Q. But it is possible for an exchange to give you reels which are not being shown at the same time by your competitor? A. Yes, sir.

Q. And they do this? A. Yes, sir, especially when you ask them. Sometimes, if you don't request it, they don't know. 2

Q. But if you request it, and are vigilant to prevent such conflicts, the pictures are shown at times widely removed from each other? A. Yes, they do the best they can, of course.

Q. You have told us something of the difficulty you had in obtaining the pictures you wanted prior to the formation of the General Film Company. Did you have any difficulty with exchanges in regard to their keeping their agreements with respect to the service that they would give you? A. They wouldn't agree to give you any particular service previously. They simply agreed to give you some films for so much money. 3

Q. And what would you do then to see that you did get a good program aside from the practices you have already described? A. Well, at that time the exhibitor had access to what was termed the back room—and they used to have shelves—

Mr. GROSVENOR: At what time? 4

The Witness: This is prior to the advent of the General Film Company. And these films were all in individual tin boxes, and they were on the shelves, and on the outside of the boxes was a little label of paper with the name of the maker and the title of the subject, and we used to go into the backroom and simply take off the shelves any particular reel or reels that we wanted in order to fill out our program.

1 By Mr. KINGSLEY:

Q. Mr. Koerpel, have you had any experience, or any knowledge of the treatment of theatres by exchanges where the proprietor of the exchange was also the part, or the whole proprietor, or owner of the theatre? A. I have had to this very day. My opposition, that is, my worst opposition, of course, is Mr. Fox, at the Audubon Theatre, at 165th Street, and another theatre of his at 149th Street. Now, I know that his men, perhaps by his instructions, had a practice that whenever I had advertised a release of the
2 General Film Company, and I had spent time and money in doing it, that just about one or two days before that, that picture is shown in his house.

Q. Has this happened more than once? A. It has happened many and many times. I know, in fact, I have seen his men come right up to my lobby with a pencil and paper and copy off the titles of any advance subjects that I had advertised on the outside, and I have followed them right to either one of his theatres or the other.

Q. Did you find that this practice of your competitor taking advantage of your advertisement, and showing the
3 pictures you were advertising a day or two before you showed them, was injurious to your business? A. It is bound to be. This fellow has houses of very large seating capacity, one house seats thirty-two hundred people, and another house seats about two thousand, and the result is that when I get ready to show the pictures at my place the people say, "Oh, I saw that; I saw that last night, or I saw that night before last," and I can't do the business.

Q. How many specials are available a week from the licensed manufacturers, Mr. Koerpel? A. Eight, I believe.

Q. How many do you receive in a week? A. I never
4 run more than four because I leave four. There is four left for the competitor. I have a competitor, for example, two blocks away, and he has his pick of these four, and I have my pick of the other four.

Q. Do you find that the General Film Company shows favoritism to any theatre? A. To the theatre?

Q. Yes, such as you have described? A. No, sir. This theatre, that I mentioned, this man, I think he owns the Greater New York Film Exchange, which gets the licensed film, that Mr. Fox does.

Q. You refer to Mr. Fox, President of the Greater New York Film Rental Company? A. Yes, sir. 1

Q. Does he have any theatre on Fourteenth Street? A. He has the City Theatre on Fourteenth Street. And let me take time and tell you what he does there—that is, a vaudeville theatre. See? Now, every morning, beginning at nine o'clock and up until one o'clock, he takes all of the day's releases and exhibits them at this theatre for an admission of ten cents—see? That gives him a program that no exhibitor, I don't believe, in the world could buy. In other words, he has all the special releases and all the special features run off at his house called the "City Theatre" from nine o'clock in the morning until one, and then just as soon as one o'clock comes around these reels are distributed around to the various theatres that Mr. Fox operates. Now, if a small exhibitor wanted to use, or any other exhibitor who don't own his film exchange, wanted to do the same thing, if it was possible for him to get such a program, if he wanted to use it in more than one house, why, he would have to pay at least fifty per cent. additional to his regular service price, because the agreement is when you get films from the exchange, from the General Film Exchange, or the General Film Company, why, you are to use it in just one certain theatre. 2

Q. What did you say the name of this theatre was on Fourteenth Street? A. The City Theatre. 3

Q. So that, Mr. Fox, proprietor, or part proprietor of the City Theatre, on Fourteenth Street, and President of the Greater New York Film Rental Company, is showing first-run pictures, such as cannot be found anywhere else? A. Anywhere else in the world. There has never been such a program—

Q. This program is what is called a "first-run program?" A. Yes, sir. 4

Q. That is, today it would be what—and I don't mean the titles, it would be the first runs of today? A. Yes, the pictures that are put on the market this morning. I believe that the manufacturers send these reels out ahead of time so that the exchanges have them on time. Now, when Mr. Fox opens the City Theatre at nine o'clock every morning, why, all of the first runs are there at the operator's booth.

Q. In other words, every picture furnished to the Great-

1 er New York Film Rental Company by the licensed manufacturers of motion pictures is shown as first-day releases at the City Theatre in the morning? A. Well, I know that the entire program shown at the City Theatre every morning, is made up entirely of first runs of the day's releases.

Q. Have you had occasion to notice anything of the programs in Mr. Fox's other theatres? A. Well, his programs in his theatres, of course, are mixed. He uses very large features, such as Thanhouser's six-reel "Sapho," and J. Parker Reed's five-reel "Victory," in other words, outside features.

2 Q. Do you know anything about the other theatres in the neighborhood of the City Theatre? A. All I know is that they are all practically running the independent, the so-called independent reels, because it would be absolutely useless for them to try to get any kind of program that would get them any business because there is so much of the business in Fourteenth Street that seems to be done in the morning. You can go into that house at nine o'clock in the morning and find it fairly well filled. There are lots of people there, who either work nights, or don't work at all, and the natural result is, I guess there is no other licensed program on Fourteenth Street.

3 Q. So that the use by Mr. Fox of these pictures in the way you have described at the City Theatre makes it impossible for the other theatres in the neighborhood to run a competing program with the licensed pictures?

4 Mr. GROSVENOR: Objected to as calling for a conclusion, furthermore, because this witness has not shown any knowledge of competitive conditions on Fourteenth Street, his theatre being five or six miles away, and he is merely stating his opinions and conclusions; also objected to, because immaterial and irrelevant, and not the proper way to prove these matters, even if true, for the owners of the theatres should be called as witnesses, and then asked as to the reasons, and not this man, who lives six or seven miles away, who is just giving his opinions.

The Witness: If you will permit me to say, one reason I made those statements, I was very much interested in

buying a theatre on Fourteenth Street, and that caused me to investigate the conditions there thoroughly. 1

By MR. KINGSLEY:

Q. Did you go directly into the City Theatre? A. Yes, sir, I go there.

MR. KINGSLEY: Please repeat the question that I asked him, and which he has not answered.

The question was read as follows:

"So that the use by Mr. Fox of these pictures in the way you have described at the City Theatre, makes it impossible for the other theatres in the neighborhood to run a competing program with the licensed pictures?" 2

A. Yes, sir. There is only one theatre I know on Fourteenth Street that uses them.

Q. Have you observed any improvements in licensed motion pictures since 1909? A. Oh, there is an improvement. I have noticed the improvement in licensed motion pictures. They are improving every month. There has been a big improvement since 1909, and there has been big improvement over other years. 3

Q. In what respect would you say there has been improvement? A. Well, firstly, in the subjects, in other words, the stories; secondly, in the quality of the acting, and thirdly, in the photography. Those are the three most important things that I can think of.

Q. Has there been an increase in the number of subjects of pictures available to exhibitors during the years intervening between now and 1909? A. An increase in the number of reels? 4

Q. Yes? A. Oh, yes.

Q. Is this an advantage to the exhibitor? A. Oh, surely, it gives him more reels to pick from. The fact is, the exhibitors today are running, or exhibiting more reels comparatively, than they ever did before.

Q. Are you running a longer program than you did before? A. Yes.

Q. What has been the result of your observation as to whether the interest of the public in motion pictures is

- 1 increasing or decreasing? A. The interest of the public is increasing in motion pictures.

Q. Do you find that motion picture audiences take any special interest in the personality of the actors who are depicted in motion pictures? A. Very much. Everybody has their favorite or favorites, both on the male and female side, the hero and the heroines.

- 2 Q. Do you find that the audiences are interested in the play itself, and its development? A. Yes, regardless of who the actors or actresses are, whether they be the favorites or not, if the story is not a good one they will tell you of their disapproval very quickly.

Q. Does the staging of the production have anything to do with the popularity of the production? A. Yes, a great deal to do with it, the finer the detail, the more money spent on it, the better the picture pleases the audience.

Q. From your observation, would you say that audiences come to your theatre for instruction, or amusement? A. For both.

- 3 Q. Was there ever any compulsion on you to use the General Film service, or were you free to do as you liked— A. Sure.

Q. In respect to what exchange you would patronize, or what service you should use? A. I do as I like.

- 4 Q. Have you noticed any difference in the popularity of foreign pictures in the past four or five years? A. They have lost their popularity. Foreign pictures are going backward so far as the American exhibitor is concerned. We do not take them as a rule, except on certain occasions. The features seem to be very good, that is, those that are released on the General Film Company's program, but the single reels are very inferior. Audiences have been so educated to the American style of acting that the pantomime in the foreign pictures does not appeal to them any more. In other words, you can have a very good French drama on, and maybe, through some motion in the face or of a hand at some critical point which may occur, the audience will laugh—because, the reason is, that for such a long while the average French ideas or subjects were based on domestic infidelity, crime, and things which were not good to look at, and very soon found disfavor with both the audience and the exhibitor.

Q. Would you say that you are showing as large a percentage of foreign pictures now as formerly? A. Oh, no. 1

Q. How much of a falling off has there been? A. Well, personally, I run three foreign educational, or travel-ogues, and industrials, every week, and I use one or two foreign dramas or comedies each week. Formerly we had as many as five or six a week on our program.

Q. You say you have observed improvement in the quality of the pictures made by the licensed manufacturers? A. Yes, sir.

Q. Would you say that they had all improved equally, or in the same degree? A. Well, the independent manufacturers have improved wonderfully, also, but I think that they use the so-called licensed manufacturers as their standard to go by, it has egged them on. Formerly, independent producers were very shy on good photography, and good subjects, and good acting, but they are gradually taking over people who have been with the licensed companies, which makes their films more popular. 2

Q. But I refer more especially to the licensed manufacturers. Do you find that some one licensed manufacturer has improved faster, or in greater degree than another? A. Sure. 3

Q. Do you notice that some are competing more strenuously than the others? A. Some turn out better pictures than the others. Let us take the Melies films—why, they are absolutely worthless to the average exhibitor—the Vitagraph is good—but the Melies subjects are worthless to us, because their stories are no good, or the acting is no good, or else it is a one-reel travelogue, which does not go in the average motion picture business.

Q. Now, suppose you do not want the Melies pictures, do you have to take them? A. They never compelled me to take them. I would make a fair trade, I would give them a seven-day release for about a twenty-five day release sooner than take Melies. 4

Q. You have spoken of the independent manufacturers. Do they solicit your business from time to time? A. Every day.

Q. How do they do it? A. Their solicitors come around and discuss the films, and offer to put your service in for you. Of course, we get a large amount of advertising matter

1 in the mails as well from them, both from the manufacturers direct, and from the exchanges that sell their product.

Q. Do they advertise in trade papers? A. They advertise in the same papers that licensed manufacturers advertise in.

Q. Do they offer complete programs? A. Yes, sir.

Q. Do they promise to allow you to select a program of such as you want? A. Yes, sir.

Q. What other inducements, if any, do they offer you? A. Well, sometimes it is a matter of price, but, as a rule, their prices compare rather favorably with the General Film Company's; there is not much difference.

2 Q. In this connection I want to ask you, have prices increased or fallen off, increased or diminished, since the formation of the General Film Company, prices to exhibitors, I mean? A. I should say we are paying a little less today for our films than we used to.

Q. Do you find that among exhibitors, if an exhibitor has violated his license agreement, that someone is likely to complain to some other exhibitor? A. Some other exhibitor in the neighborhood will complain of the man who is using the licensed program. I think, if it was not for the complaining exhibitors, the General Film Company would never know what an exhibitor was running.

3 Q. Prior to the organization of the General Film Company, did the rental exchanges compete actively for your patronage? A. Surely.

Q. Did any of them offer you special inducements from time to time? A. Yes, sir.

Q. Do you recall any specific instance of anyone offering you special inducements to come with him? Any rental exchange? A. Well, I can remember very well such exchanges as Miles Brothers and William Steiner, when we were operating the 138th Street house, coming around and offering us inducements to change. We were getting our service at that time at the Vitagraph Company of America, at 116 Nassau Street.

4 Q. Did they ever give you to understand that if you came with them, that the houses in which they were interested would compete less actively with you? A. Well, they did not say that they were interested, but they have said that if I would go with them, that some house who was my competitor, would be kept clear of me, because they were

supplying that house, but I did learn, of course, later, that they were some way directly or indirectly interested in that house or houses. 1

Q. You mean that Mr. Steiner was interested, or Mr. Miles? A. I think it was Mr. Steiner.

Q. And had you, before this conversation, had trouble with this competing house because of conflicting programs?

A. Oh, yes.

Q. Is the independent competition increasing or diminishing? A. It is increasing.

Cross examination by Mr. GROSVENOR: 2

Q. Mr. Koerpel, you are an exhibitor? A. Yes, sir.

Q. And Mr. Fox is an exhibitor? A. Mr. Fox has both motion pictures and vaudeville in his houses.

Q. He is an exhibitor of motion pictures, isn't he? A. Yes, sir.

Q. He is a competitor of yours? A. Yes, sir.

Q. Now, competition between motion picture theatres is keen, isn't it? A. Yes, sir.

Q. You became excited and declaimed here that one of Mr. Fox's men came and stood on the sidewalk and read your announcement, or your program. That program you had printed and put out there on the sidewalk, or in front of the sidewalk, for everyone to read? A. Not the program; the announcements of coming features. 3

Q. You had printed this announcement of coming features, and placed it so everybody passing on the sidewalk could read it? A. Yes, sir.

Q. And you put it there for the purpose of being read by those who passed, didn't you? A. Yes, sir.

Q. That man that stood on the sidewalk was not prying into any of your private affairs, was he? A. I followed him right to the Audubon Theatre. 4

Q. I did not ask you what you did. I say, that man standing on the sidewalk was not prying into your private affairs, was he?

Mr. KINGSLEY: I object to the question as calling for a conclusion of the witness.

The Witness: If he was a disinterested party, I would say he was not prying into my affairs.

1 By Mr. GROSVENOR:

Q. When he stood on the sidewalk and read the announcement which you held out to the whole world, to everyone that was passing on the sidewalk, was he prying into your private affairs? A. Well, I would not call it my private affairs, no, if I put it out there for everybody, people, to see, but, on the other hand, inasmuch as he was sent there distinctly to find out what I had, not as a customer, but as a competitor, and then to use it as a wedge against me, I claim he was prying into

2 my affairs.

Q. Did he go inside of your office? A. He has been inside of my theatre, and looked at the announcements on my screen when I stopped putting posters outside of my lobby.

Q. And he came inside of your theatre and looked at— A. Paid his admission just like every other customer.

Q. And he came in and looked at the pictures on your board, you say? A. Not the pictures. The announcements on my screen of coming features.

3 Q. And you consider that prying into your private affairs? A. I consider it getting as much information as he can, what my business was, so as to get these pictures ahead of me, and it was to use it as a wedge against me. Because in every instance, the picture has been exhibited in one of Mr. Fox's houses prior to my getting it.

4 Q. Didn't you say on your direct examination that you yourself go down to the City Theatre on 14th Street, and go into Fox's Theatre, and see what he is doing? A. Yes, I go down there, but not to see what he is doing. I go down there to see those pictures on the day that they are released, and I put that information, whether they are good pictures or pictures that I do not want, in my release book, and when I go to the General Film Company's exchange to book those pictures, I use that information to guide myself whether it is the pictures I want or do not want. That is the reason I go into Mr. Fox's theatre on 14th Street.

Q. Then you go into Mr. Fox's theatre on 14th Street and read everything that is put on the screen in Mr. Fox's theatre while you are there? A. Certainly.

Q. And the other man of whom you complain, goes

into your theatre and reads everything that is put on the screen in your theatre? A. True. But here is his advantage. If he wants to get a picture before I get it; if it is a feature, there is nothing on the Lord's great green world, or earth, to stop him from getting it, but there is something to stop me from getting it. 1

Q. Now, let me ask you this. Are you the only theatre that puts advance notices on your screen of what you are going to show in the future? A. No, sir.

Q. Then why don't you see down at 14th Street in Fox's theatre, on his screen, advance notices, just as the man who goes into your theatre sees advance notices? A. Because Mr. Fox does not use his theatre on 14th Street as a motion picture theatre. In the morning he runs the pictures, and in the afternoon, he runs it as a vaudeville show. He uses his 14th Street theatre only to show the reels on the morning that they are released, and there is no possibility of anyone getting it sooner; and secondly, to make his pictures earn him an additional amount of money, without costing him anything extra. 2

Q. Can you specify anything else that this man did that you complained of on direct examination, except standing in front of your theatre, and reading your public announcement? A. I don't know anything else he did except take the information I had and supply it to the Greater New York Film Rental Company, who saw to it that the theatres that were close to me got those features before I did. 3

Q. You could have gotten them yourself, couldn't you? A. No, sir. I cannot take a feature and afford to pay for it on the day it is released, and I cannot take a feature and book it ahead of my competitor, and he can. 4

Mr. KINGSLEY: You don't own a rental exchange.

The Witness: No, sir, I don't.

By Mr. GROSVENOR:

Q. You are very friendly to the General Film Company, aren't you? A. No, sir.

Q. Are you friendly to the Patents Company? A. No,

1 sir, I know nobody in the Patents Company. I don't know anybody in the Patents Company.

Q. Don't you know any of the licensed manufacturers?

A. No, sir.

Q. Who asked you to testify? A. The exchange manager.

Q. Who is he? A. Mr. Buxbaum.

Q. An exchange manager of the defendant company?

A. The General Film Company.

2 Q. In referring to the exchanges whose licenses were cancelled, or referring to the exchanges before the formation of the General Film Company, you mentioned Miles Brothers and Steiner Brothers. A. Miles Brothers, and I think it was called William Steiner's exchange, if I remember correctly.

Q. You say that Miles Brothers offered you inducements when you were buying your films from the Vitagraph Company, to persuade you to leave the Vitagraph Company, and go to them, isn't that it? A. Yes, sir.

Q. And you say that Miles Brothers at that time owned theatres? A. Sure. Miles Brothers owned theatres.

3 Q. Do you know that at that time the Vitagraph Company was owned by—that is, the Vitagraph Company down on Nassau Street from which you were buying these films, was owned by the Vitagraph Company of America, a licensed manufacturer? A. I presume that it was the same people.

4 Q. It was. And the Vitagraph Company of America was part owner of the General Film Company, did you know that? A. I know that now. I did not know—of course, at that time there was no General Film Company. When they were on Nassau Street, there was no General Film Company.

Q. When was it that Miles Brothers offered these inducements to you? A. When I was getting the films in Nassau Street.

Q. So that the fact was this, the Vitagraph Company was owned by one of the licensed manufacturers, wasn't it? A. Well, at that time there was what was termed the Film Service Association, in which the so-called present licensed manufacturers were members. We did not refer to them as licensed manufacturers, because we knew nothing about licensed manufacturers.

Q. Wasn't there the Edison License Association at that time, or didn't you know enough about the business? A. Not that I know of. We never referred to them at that time as licensed. 1

Q. Is a feature an important part of your program? A. Very important.

Q. Why is a special feature an important part of the program of an exhibitor? A. The picture-going public have been looking at the so-called single reels for the last seven or eight years, and some two years ago the outside manufacturers, as I would say, independent manufacturers, began making, as we term them, multiple reels, making longer stories, and also using the plays and stories of well-known plays and novels. 2

Q. Let me interrupt you a minute. Do you consider that an improvement in the art? A. Very muchly.

Q. And it was an improvement which was not originated by the General Film Company? A. Well, as far as the improvement is concerned, that I don't know.

Q. You say that the independent manufacturers were the first to begin these multiple reels? A. I don't know whether they were the first to begin them, but they were the first to use it as a business in itself, outside of the regular single reel. 3

Q. They were the leaders, then, in special features? A. Special features, yes.

Q. They first recognized the value of the special features, didn't they? A. When I say special features, I mean the dramatization into film of well-known plays and novels, such as Mr. Daniel Frohman is doing now with the Famous Players Film Company, and Mr. Augustus Thomas in the All Star Film Company.

Q. Now proceed with your history. A. Those films, of course, they range in length from 2,000 feet, or, I should say, two reels to six to eight reels. It can be operated profitably in a house of fairly large seating capacity. Well, the matinees at these large houses are, of course, at reduced prices, say 10 cents, and on account of the large seating capacity, many, many people in the residential neighborhoods go to see these so-called features, and it became necessary then to do something with the smaller man in order to appease the demand or the desire of the people to see 4

1 something in the place of a single reel, and today we have reels on our program, I think it is eight multiple reel subjects every week. The same way with the independents. They have a great number of multiple reel subjects released every week, and no exhibitor—no exhibitor would think of running his program without three or four multiple reels at least a week. And when I cannot get enough or the amount I want in the General Film Company, I go out and I book independent features.

Q. How long have you been allowed to book independent features? A. Allowed?

2 Q. Yes. A. I have booked them ever since I have felt like booking them.

Q. When was it that you first felt like booking them? A. I have never felt any different. I have ran independent features as far back—

Q. When did that feeling carry you into action so that you did book the first independent feature? A. That is going back—I cannot tell you when I first booked them. I have run independent features since I have had—when the Patents Company was first formed, they issued what
3 is termed a license, a little green slip from the Motion Picture Patents Company, and that never stopped me from running an outside feature film if I felt like it.

Q. When did you first show an outside feature after the Patents Company was organized? A. Oh, I ran them three years ago. I am safe in saying that.

Q. You knew about these restrictions in the license, didn't you? A. Yes, sir, I read about them and I read of licenses being cancelled.

Q. But you took a chance, didn't you? A. I certainly did.

4 Q. And you escaped? A. Well, they did not bother me. I will say this. Possibly there was no competing exhibitor in the neighborhood that notified them of it, but at any rate, whether they knew of it or did not know of it, they did not bother me.

Q. And that is in part the reason for your friendly feeling toward them, that they did not bother you when they were bothering others for doing the same thing.

MR. KINGSLEY: I object to the statement that the

witness has any friendly feeling toward the General Film Company. 1

The Witness: Just the opposite. I have had lots of arguments with the General Film Company.

By Mr. GROSVENOR:

Q. I did not mention the General Film Company in my question. I am talking about the licensed manufacturers and the Patents Company. Does the fact that the Patents Company did not cancel your license and allow you to show independent features or films at a time when, as you have stated, they were cancelling the licenses in other theatres for showing independent films; does that fact have any influence in your attitude toward the Patents Company? A. Not a particle, sir. I don't say that they knew I was running independent films, but I certainly have run them. 2

Q. This Palace Theatre of yours is a popular theatre, isn't it? A. Yes, sir.

Q. And it pays well? A. Fairly well.

Q. It has prospered 'ever since you started? A. Yes, sir, and I hope it will continue so. 3

Q. So that you have not found that that action of the man who read your public announcements on the sidewalk, has caused you such damage that your business ceased to be prosperous? A. Well, but it has caused me damage on the particular days when I ran those features, and after a feature is once booked, you know—

Q. How much damage did it cause you on those days? A. At least fifty per cent. of the day's receipts. You see, here is a very important point. If I have a program booked with a feature on it, I will come down to run that feature tomorrow, and I will find that that feature is being run elsewhere today, and I go down to the General Film Company to get another feature, I stand a good chance of getting no other feature, because those features are all booked solid. I have either got to take that feature or take some single reels. 4

Q. How about your theatre at 151st Street and Broadway? Has that been prosperous? A. That is closed now. That is an open air theatre. An airdome.

1 Q. That is a thing you open only in the summer? A. Yes, sir.

Q. And was that prosperous this Summer? A. Not this Summer, because we had a bad season.

Q. And that was the cause for that want of prosperity? A. Yes, sir.

Redirect examination by Mr. KINGSLEY:

Q. How far away is the City Theatre from your theatre? A. The City Theatre?

2 Q. Yes; on 14th Street. A. That is miles away from my theatre. That is at 14th Street, and I am at 157th Street and Amsterdam Avenue.

Q. And when you went down to the City Theatre, did you go down there to take advantage of any of Mr. Fox's advertising or showing of any pictures in advance of him? A. I did not. I went down there to get the stories of the films on their release day.

Q. So that you could make up a program of your own? A. Yes, sir; of the three reels that I book on my program every day.

3 Q. You had no desire to circumvent him or outwit him, or get the better of him? A. I could not if I wanted to.

Q. The announcements which you put out in front of your theatre, and which you say were for all the world, were intended to attract customers to come to your place to see the exhibitions you gave? A. Certainly not competitors; customers.

Q. You did not put out this advertising for the purpose of informing your competitor of what you were going to do, in order that he might arrange to do it a day or two in advance of you? A. Certainly not.

4 Q. How close is that competitor to you? A. Well, he has two houses. One of them is six blocks away, seating 3,200 people, and one is eight blocks away, seating about 2,000 people.

Q. The business of exhibiting motion pictures is a theatrical business, is it not? A. Well, I would call it theatrical. It is to entertain or amuse.

Q. And the success of your business depends upon changes in program? A. Sure.

Q. And upon changes in subjects? A. Yes, because we

get the same people, you see, coming to our theatres—of course, I don't include those that are in transient streets, like 14th Street, but our theatres are all in residential neighborhoods, and we get the same people, or the same families, each night, or every other night. We must change our programs. Although it would be possible, I think, too, in some cases, in fact, in many cases, to change the program only every other day. 1

Q. But you change every day? A. I change every day. Somebody started that once, and we have to keep it up.

Q. And is that the custom in this city? A. Oh, yes. 2

Recross examination by Mr. GROSVENOR:

Q. Did you pay the two dollar a week royalty after the Patents Company was organized? A. Yes, sir.

Q. How long did you pay it? A. Well, I guess I paid it as long as—I suppose I pay it yet, although I don't get any such things as receipts as I used to get.

Q. When the Patents Company was organized, in 1908, what projecting machine were you using? A. The Powers. I have never used any other projecting machine but a Powers of the various numbers. 3

Q. How long had you been using the machine which you then had? Approximately, if you can recall? A. Oh, I should say six months.

NATHAN MACHAT, a witness called on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. KINGSLEY: 4

Q. In what business are you engaged, Mr. Machat? A. In exhibiting motion pictures.

Q. How long have you been engaged as an exhibitor of motion pictures? A. Since the latter part of 1907.

Q. Where are you located at the present time? A. I am located now at No. 657 Nostrand Avenue, Brooklyn, New York.

1 Q. How long have you been located at 657 Nostrand Avenue? A. Four years.

Q. Are you the owner of the place? A. Yes, sir.

Q. Were you in the motion picture business before you located at this present place? A. Yes, sir.

Q. Where were you located then? A. At 1510 Broadway, Brooklyn.

Q. How long were you at 1510 Broadway, Brooklyn? A. I was there about a year and a half.

2 Q. Were these two theatres to which you have referred the only ones with which you were connected? A. No, I was connected with several.

Q. Prior to that? A. Not prior to that, but during this time.

Q. You owned several simultaneously, or were connected with several at about the same time? A. Yes, sir.

Q. What other theatres were you connected with? A. I have a theatre now on the corner of Gates and Reid, called the Gates Avenue Theatre.

3 Q. That is Gates and Reid Avenues, Brooklyn? A. Gates and Reid Avenues, Brooklyn. And also at 680 Gates Avenue, called the Stuyvesant, and also I had the Bedford Theatre on Bedford Avenue. And I had one house in Bermuda.

Mr. GROSVENOR: How many theatres do you now own?

The Witness: Two.

By Mr. KINGSLEY:

Q. One on Nostrand Avenue, and the other at Gates and Reid Avenues, Brooklyn? A. Yes.

4 Q. From what rental exchange do you obtain motion pictures at the present time? A. General Film Company.

Q. Do you obtain motion pictures for both of your theatres from the General Film Company at the present time? A. Yes, sir.

Q. From what branch of the General Film Company do you obtain motion pictures now? A. The 23rd Street branch.

Q. How long have you been obtaining motion pictures from the General Film Company's 23rd Street branch? A. Since they moved in there.

Q. And how long is that? A. I guess that is last 1
January, or December. I am not quite sure.

Q. From whom did you obtain motion pictures before
you took them from the General Film Company? A.
Well, before that I have taken service from the Greater
New York Film Rental Company.

Q. How long were you with the Greater New York
Film Rental Company? A. I think I was something like
six months with them.

Q. And then you went to the General Film Company?
A. Yes, sir.

Q. About what time did you go to the General Film 2
Company? A. I think that must have been in 1910.

Q. And before you went to the Greater New York
Film Rental Company, where were you getting your film?
A. Vitagraph Company.

Q. From the Vitagraph Company's exchange on Nassau
Street? A. Yes, sir.

Q. So that during your business experience, you have
obtained motion pictures from the Vitagraph Company's
exchange in Nassau Street? A. Yes, sir.

Q. And the Greater New York Film Rental Company? 3
A. Yes, sir.

Q. And since some time in 1910, from the General
Film Company? A. Yes, sir. From the General Film
Company.

Q. What projecting machine do you use in your the-
atres? A. I have always used a Powers. I have used a
Powers No. 5, No. 6, and using now the No. 6a.

Q. In your experience as an exhibitor, have you had
any difficulty arising from the fact that your competi-
tors used conflicting programs? A. I had that experience
last year when I was about to go to the Greater New 4
York Film Rental Company to take service of them, and
I finally changed my mind.

Mr. GROSVENOR: I object to testimony as to
what he was about to do, and I submit if he testi-
fied to just what he did do, that is enough.

The Witness: I had agreed to take service with the
Greater New York Film Rental Company. They were
trying to get me for two months in succession.

1 Mr. GROSVENOR: I object to all this testimony as immaterial.

By Mr. KINGSLEY:

Q. Proceed, Mr. Machat. A. And I came up to their place of business, and when I saw the conditions of it, I changed my mind.

2 Mr. GROSVENOR: I object to the word "conditions" as not being sufficiently definite. Does he refer to the conditions of the contract, or the conditions of the office?

The Witness: The conditions of the place. Of the place of business.

By Mr. KINGSLEY:

Q. And were any special inducements offered you to go to the Greater New York Film Rental Company? A. Yes, sir.

3 Q. What were they? A. I was to get the same service that I was getting from the General, for less money.

Q. With whom did you have these negotiations? A. Mr. Rosenbluh.

Q. Have you found that prices have increased or diminished since you have taken service from the General Film Company? A. Well, I am using one service in one house for the last two years, getting the same style of service, the same age at the same price. According to the quality of the goods that is made now, I think we are paying less money than we have paid years ago.

4 Q. Before the General Film Company was formed, did you have any knowledge of the treatment which exchanges gave to exhibitors? A. Yes, sir.

Q. Did you have occasion to know whether they were liberal with promises? A. That has been one of the greatest things in this business. Promises have always been made by various exchanges.

Q. Well, were these promises carried out? A. By some.

Q. What sort of promises were they, Mr. Machat? A. Well, we were to get five-day stuff—

Mr. GROSVENOR: I object to this as being further testimony as to what might have been done, but was not, and, therefore, irrelevant. 1

Mr. KINGSLEY: It is because it was not done that it is material.

By Mr. KINGSLEY:

Q. What would you say as to whether these promises were kept or not? A. Well, I was promised a certain class of service—

Mr. GROSVENOR: State by whom you were promised. 2

The Witness: I was promised by Mr. Rosenbluh, of the Greater New York Film Rental Company, a certain service for \$40 a week. My service was supposed to be a ten-day on my first reel, twenty-day on my second reel, and a thirty-day on my third reel. The fourth reel was to be a commercial. When I started to look up my reels that I was getting, I found that I could not find them anywhere in any of the trade papers, because they were so far back that at that time I don't think they have printed them. Some of them reels had something like six subjects on it, pieced together from several reels, which had no beginning and no end. That was about the time that I got disgusted, and I went to the Kleine branch of the General Film Company. 3

By Mr. KINGSLEY:

Q. Would you tell me about what year that was? A. I think that was in 1910. 4

Q. You don't know the month? A. Well, it was during the winter months.

Q. So that you left the Greater New York Film Rental Company because you were dissatisfied with its services? A. Yes, sir.

Q. Before the General Film Company was organized, did you find it possible to advertise a program in advance? A. We never got any programs.

Q. Do you get programs now? A. Yes, sir.

Q. Do you advertise your programs in advance? A.

1 Yes, sir. We issue a program in our theatre, and in that, we give the program for one week and sometimes two weeks in advance.

Q. Before the General Film Company was organized, could you go to an exchange and select pictures in advance for a program? A. Well, if I found them in the place, I guess I could have got them if somebody was not ahead of me.

2 Q. Since the organization of the General Film Company, have you been able to select pictures in advance? A. I have been able to request for some pictures, and I get them at the day that I want, if they are not taken by somebody else. Then I get them a day or two later.

Q. Do you generally get the pictures you want when you make a request? A. Yes, I get everything I want.

Q. Do you frequently make a request? A. Yes, sir.

Q. Do you find that that request is complied with, if possible? A. Yes, in most cases.

3 Q. Before the General Film Company was formed, did you know of any theatres that were owned by exchanges, or by the proprietors of exchanges? A. Yes, sir, I knew several of them.

Q. By that I mean motion picture theatres. A. Yes, sir.

Q. What ones do you have in mind at this moment? A. William Fox owned the majority of them that I know of.

Q. Did you ever come in competition with any of the theatres that were owned by Mr. William Fox? A. Well, I think on Broadway, Brooklyn, I did.

4 Q. What was the character of the service that this competing theatre was giving at that time? A. They have used everything that was new. At that time I was taking service at the same place, and I was getting what I paid for, or I was not getting what I paid for; in fact, they had no age at all.

Q. That is, your program was made up without regard to your wishes by the Greater New York Film Rental Company? A. My program was made up by one of the young men in the Greater New York Film Rental Company, which did not favor me very much, being as I could not come up with it.

Q. Being as what? A. Being as I could not come up with the dough. He told me deliberately one day that he

did not want no presents, but he wants cash, and that was the time when I made up my mind that it is time to leave. 1

Mr. GROSVENOR: I object to that statement of the conversation unless the witness gives the name of the person with whom he was talking.

The Witness: It was a fellow by the name of Jack.

By Mr. KINGSLEY:

Q. Is that his first name? A. The first name. The second name I could not remember. 2

Mr. GROSVENOR: You called him Jack?

The Witness: I called him Jack. He was the man high up there. And Mr. Rosenbluh had nothing to say outside of when Jack said anything.

By Mr. KINGSLEY:

Q. During this period, when you found it difficult to induce Jack to give you a satisfactory program, what sort of program was being shown by Mr. Fox in his theatre on Broadway? A. Well, I never took any notice of what my competitor was running. I did not take much notice, but I knew that much, that his stuff when it came on the screen was new, and my stuff, one reel had about six subjects, and you could not make out what it was. I was paying at that time \$40 a week. 3

Q. Prior to your going with the General Film Company, were you frequently solicited by different exchanges to give them your business? A. Yes. I was solicited by the Actograph. That was one branch of the General Film Company. 4

Q. At the present time, do you find that the producers of licensed film are advertising their product freely? A. Yes, sir. I think they are doing all they can to put before the exhibitor their products that are coming. We get every week packages of mail from every licensed manufacturer, with all the future releases, saying that we should get them of the exchange. They are also advertising in the trade papers.

1 Q. Are you frequently solicited at the present time, or are you solicited at all by representatives of the unlicensed exchanges? A. Yes, sir.

Q. Do they try to get you to leave the licensed manufacturers and go with them? A. Yes, sir.

Q. And is the competition on the part of the unlicensed exchanges active at the present time? A. Pretty active.

Q. What prices do they offer you? A. Well, the prices range about the same. There ain't much difference in the prices, but they are always trying to point out some releases which they are releasing lately, of importance.

2 Q. Do they offer you complete programs? A. Yes, sir.

Q. What would you say, during the past four years, as to whether or not the service has improved? A. Well, I claim that the service is improving every day. I think the pictures of today are better than the pictures of yesterday.

Q. Do you think there is an improvement in quality? A. In quality and everything, photography and acting.

Q. Do you think there is improvement also in the system of distribution over the system that prevailed before the General Film Company was organized? A. Oh, yes. There is a system, now, that we can tell what we are going to have next month, where we did not know before.

3 Q. Do you find, Mr. Machat, that some brands of motion pictures are more popular than others? A. Yes. It all depends on the neighborhood.

Q. Do you find that your audiences are frequently interested in certain brands of motion pictures? A. Yes, sir.

Q. In the products of certain producers? A. Yes, at least, in my neighborhood they are.

Q. Do you find that your audiences are frequently interested in the personality of actors and actresses who appear frequently in motion picture dramas? A. Yes, a great deal.

4 Q. What is your experience with reference to audiences or members of audiences coming to you after the show and making complaints? Do they ever complain of the character or quality of the pictures? A. Well, I very seldom have that experience at the present time. There are some makes which I reject, because I don't think they will take with my audience.

Q. Are you obliged to take any brand of motion pictures

that you don't want? A. No, sir. I am not obliged to take anything that I don't want. 1

Q. What would you say as to the relative merit of unlicensed pictures and licensed pictures at the present time?

A. Well, there is some of the unlicensed films that are pretty good. They have advanced far enough. But there is something lacking about the independent films, what, I cannot say. There is something in it that does not take. I have tried to use independent films several times, and they don't take very well.

Q. Do I understand by that that you switched at one time from the licensed film to the unlicensed film? A. Yes, sir, I have switched several times. 2

Q. And then you came back again and used licensed motion pictures? A. Yes, sir; I have switched about four or five times.

Q. And did you ever have any difficulty in resuming your service with the General Film Company? A. No, sir. Always got it.

Cross examination by Mr. GROSVENOR:

Q. Mr. Machat, did you have a theatre when the Patents Company was formed in the Fall of 1908? A. Yes, sir. 3

Q. And you took out a license from the Patents Company? A. Well, I did not take out no license. I got my service.

Q. You paid your \$2.00 a week? A. Yes, sir. I think, around that time, I think I was running independent for a few months, if I can recollect well.

Q. Did you take out a license and begin to use the film of the licensed manufacturers when the Patents Company was formed in December, 1908? A. What do you mean by taking out a license? 4

Q. Did you pay your \$2.00 a week? A. Yes, sir.

Q. Beginning with December, 1908? A. Yes, sir. I don't know the exact month.

Q. Now, after that, was your license ever cancelled by the Patents Company? A. Yes, sir.

Q. And that cancellation by the Patents Company was one of the occasions which made you switch, as you called it, from the licensed to the unlicensed film? A. Yes, sir.

Q. At that time when your license was cancelled, from

- 1 what rental exchange were you getting your films? A. Am I allowed to tell the exact story how this thing happened? I want to bring that out.

Mr. GROSVENOR: You can tell the story in your own way on your redirect examination. I wish you would answer my questions, now, directly as I ask them.

Mr. KINGSLEY: You are at liberty to answer questions.

- 2 By Mr. GROSVENOR:

Q. First state the answer to my question. A. I had been taking, at that time, service from the Greater New York Film Rental Company.

Q. I am not asking you what you had been taking. At the time your license was cancelled by the Patents Company, what rental exchange was supplying you with service? A. The Greater New York Film Rental Company.

- 3 Q. How long had you been getting service from the Greater New York Film Rental Company at the time your license was cancelled? A. I think, a few months.

Q. After that, to what rental exchange did you go for service? A. To the Kleine branch of the General Film Company.

Q. And you became a customer of the General Film Company? A. Yes, sir.

Q. And was your license restored to you? A. Yes, sir.

Q. Was your license ever cancelled after that? A. No, sir.

- 4 Q. Do you think that you gave a fair account on your direct examination of the circumstances attending your going from one rental exchange to another, seeing that on your direct examination you omitted to state the fact that your license was cancelled by the Patents Company? A. If you will allow me to bring this thing out, you would get it a little plainer, and you would understand it a little different.

Q. All right, go ahead. Tell your story. A. Well, when I was with the Greater New York Film Rental Company, at the time my eyes were opened, and I knew what I was going to get, that is, what I ought to get, and I did not get, and they did not want me in that ex-

change. They wanted to get me out of there. At that time I was not at my theatre, when my manager received a call to help out an exhibitor with a certain reel at another house. This exhibitor was a friend of mine. He gave him that reel. This friend of mine told me that he was put up by Mr. Rosenbluh to ask for that reel, and when I came up the next morning, I received a telephone in my house that my operator cannot get any service. I said, "Why?" He said, "You have given your reel to an independent exhibitor, and, therefore, your license is cancelled." I said, "When does the cancellation go into effect?" He said, "Right now." I said, "Can't you give me my show and give me a chance to come to New York, and to arrange for another service?"—as it was close to 3 o'clock, and I had to open my theatre. He said, "No, I cannot give it to you." 1 2

Mr. KINGSLEY: Who said this?

The Witness: Mr. Rosenbluh, over the 'phone. I had to go to New York, close up my theatre for the afternoon show, and arrange for an independent service at that time. I had no time to choose. The next day I made up my mind to go up to the Patents Company and find out what was the trouble. One of the men there told me that the complaint came in where I have used one of my reels in some other house, and when I had explained him the matter, he said, "There was absolutely no necessity to cut off your service without a hearing. This is a thing that we would not do." I have arranged for my service the very same day, and I got it off the Kleine branch. 3

By Mr. GROSVENOR: 4

Q. You say that the Greater New York Film Rental Company wanted to get rid of you? A. Yes, sir.

Q. Why did you try to give the impression on your direct examination that you left the Greater New York Film Rental Company voluntarily because their service was bad and they gave you these films with six subjects on one reel?

Mr. KINGSLEY: I object to that question as not

1 being a correct statement of what the witness testified to.

The Witness: That was a year and a half previous to that day.

By Mr. GROSVENOR:

Q. And you went, then, back to the Greater New York Film Rental Company afterwards, in spite of that service which you have testified to? A. Well, Mr. Rosenbluh is a great orator, and he met me several times, and he told
2 me that the condition of their place, and the condition of their films were different entirely. He sent that man to me to tell me that the system that they have got in booking films is arranged so that I can tell what I am getting a year in advance. When I came up to them, I found the same thing. The booker was the boss. If I did not come up with the money, I did not get what I wanted. And my experience with the six subjects on one reel was one year and a half previous to that.

Q. In any event, you stayed with the Greater New York Film Rental Company until your license was cancelled by the Patents Company? A. Well, that was only
3 about two months.

Q. Well, you stayed with the Greater New York Film Rental Company until your license was cancelled? A. Yes, sir.

Q. And then you went directly, the next day, to the Patents Company, and said you would buy your film from the Kleine branch of the General Film Company? A. I did not say that.

Q. What did you say? A. I said that I came up to the Patents Company to ask them why I was treated
4 that way.

Q. Did you say anything about where you would get your film? A. No, sir.

Q. But you got it the very same day, did you, from the Kleine branch? A. I did not say I got it the very same day. I got it five days later. I have used five days' service of the Empire Film Company.

Redirect examination by Mr. KINGSLEY:

Q. Did you ever get a notice of cancellation from the Patents Company? A. No, sir.

1

Q. Was the first intimation you received that your license had been cancelled, obtained from Mr. Rosenbluh?

A. Yes, sir, through the 'phone.

FRED JEFFERYS, a witness called on behalf of the defendants, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. KINGSLEY:

2

Q. What is your business, Mr. Jefferys? A. Motion picture exhibitor.

Q. Where are you located at the present time? A. At 342 Central Avenue, Jersey City.

Q. Do you own a place there? A. Yes, sir.

Q. Do you own any other place at present? A. Not at present.

Q. Have you owned any other places before this? A. Yes.

Q. How long have you been located at the place to which you have just referred? A. A year and a half.

3

Q. And before that time, where were you located? A. Newark Avenue, Jersey City.

Q. Did you have a moving picture theatre there? A. Yes, sir.

Q. How long were you at that place? A. Three years, about.

Q. So that you have been at least four and a half years in the motion picture business? A. Seven years altogether.

Q. What was your first connection with the motion picture business? A. An exhibitor.

4

Q. At what place? A. Newark Avenue, Jersey City. Not the last place, but another place.

Q. You had three places altogether, or more than three places? A. More than three, including the Empire Theatre, in Newark, and Empire Theatre in Hoboken.

Q. What was the capacity of these various theatres? A. Varied from 2,000 to 450 seats.

Q. You are only operating one now, are you? A. Only one.

1 Q. From what rental exchange are you obtaining motion pictures at present? A. 23rd Street branch of the General Film Company.

Q. How long have you been obtaining motion pictures from this branch? A. I moved to the downtown office about three months ago.

Q. Before you began taking service from the 23rd Street branch of the General Film Company, where were you getting service? A. Thirtieth Street.

2 Q. And how long have you been taking service from the General Film Company or its branches? A. Since the beginning of the General Film Company.

Q. From what exchange were you taking motion pictures before the formation of the General Film Company? A. Kleine.

3 Q. And how long had you been taking pictures from Kleine's exchange? A. Different periods. That is, when I changed a house, I would go to Kleine and probably there would be a layoff of a couple of months between the selling of one house and the purchase of another, or taking over the management of a theatre where the film service might be independent, but it would not last long. It would not remain independent long.

Mr. GROSVENOR: You mean you are somewhat in the business of trading in exhibition houses? You have one and then sell it and buy another?

The Witness: Well, if I would see a good buyer coming along, I will get rid of a house and buy something better.

By Mr. KINGSLEY:

4 Q. Before the formation of the General Film Company, did you find it feasible to advertise programs in advance? A. Well, no. No. In those days it was pretty hard to tell just what you would get. You could not make up your mind that you were going to get a certain picture on a certain day, no matter even if that picture had been promised, because if you advertised, the chances were about an even thing that you would not get it. Just as likely not to get it as to get it, so that your patrons would be disappointed and you, yourself, would be out of gear as a

result, and the whole thing would fall flat, so that it would be foolhardy to advertise ahead of time. 1

Q. Since the formation of the General Film Company, have you had a regular program which you could announce in advance? A. A regular program that carries me at least a week in advance.

Q. And do you advertise it in advance? A. Oh, yes.

Q. And have you found it possible to go and select pictures in advance? A. I select my pictures.

Q. Do you select the whole program? A. I select three out of four reels.

Q. And are the three that you select, always delivered to you? A. Always. 2

Q. Do you have difficulty at the present time with conflicting service? A. I have none. My competitors are both taking their pictures from the same exchange as myself, but it is so systematized that we do not clash. We keep apart. That is, I don't repeat on the other man's pictures, nor the other fellow across the street, and they don't repeat on my service.

Q. All three of you find that your rental exchange provides programs so that you do not conflict with one another and kill one another's business? A. We do not conflict. 3

Q. Before the General Film Company was formed, did you have any difficulty with regard to conflicting services? A. Why, yes. I found that I had to just simply go, in this case where I took over the house that I have now, I had to go to the General Film Company in order to duck the results of the other people who were dealing with the Greater New York.

Q. Just what do you mean by that? A. I meant by that that when I took hold of this house, it was running the independent service. Then I could see that the Greater New York people were giving these men a beautiful service of pictures. 4

Q. That is, the competitors of this new house? A. My competitors. And the only thing I could do in order to save myself was to go to the General Film Company's service.

Q. By these men you mean your competitors? A. I mean my competitors, yes.

Q. Before you took the house to which you have just re-

1 ferred, did you have any difficulty with conflicting programs? A. No, I never have.

Q. Mr. Jefferys, have you been familiar with the prices of motion pictures to exhibitors during the years when you have been in business? A. Oh, yes.

Q. What would you say as to whether prices have increased or diminished since the General Film Company came into existence? A. I think the prices are lower.

Q. By that you mean the prices to exhibitors? A. To exhibitors, yes.

2 Q. Would you say that conditions had improved, or had grown worse, so far as the exhibitor is concerned, since the General Film Company came into existence? A. Conditions have improved. Greatly improved. The thing has been systematized now, and it gives the exhibitor a chance to work in harmony with his competitors, and he can rely on having features or even single reels that have been picked ahead of time, and advertise to that effect. Everything is worked harmoniously now, whereas in the old days, it used to be a case of continuous clash.

3 Q. Just what do you mean by things working in harmony as far as your competitors are concerned? A. Well, if your competitors are running so-called licensed film, why, you are going to run a different film, although getting from the same manufacturers, I mean. You can keep apart from the other man. You don't have people coming out of your theatre and halting in front of your lobby, and say, "Why, I saw that down at so and so." Because they have not. It is kept apart.

Q. Have you been under any compulsion to deal with the General Film Company? A. Absolutely none.

4 Q. Have you felt free at any time to leave the licensed manufacturers and take any other service you might select? A. Oh, yes.

Q. Have you observed whether or not the licensed producers of motion pictures are competing with each other with respect to trying to get the favor of the exhibitor? A. Why, they show keen competition.

Q. Do they circularize you? A. Oh, yes.

Q. Do they call attention to their new pictures? A. They do call attention. Almost every mail we receive printed matter from the different producers, dwelling on the fact that their particular feature has never been

equalled, and so forth. The old show gag of trying to out-strip the other fellow. 1

Q. Each one of the producers, in other words, is trying to induce the exhibitors to demand from the rental exchange his particular brand of pictures? A. Yes, sir.

Q. Do you find that some makes of motion pictures furnished by the licensed producers, are more popular than others? A. Oh, yes.

Q. Do you find that some of these producers are going ahead more rapidly than others? A. Very much so.

Q. Do you find that they are winning the favor of the exhibitors, and of the public, more readily than the others? That some of them are? A. Yes, I find particularly that the Vitagraph and Biograph Company's productions are very much in demand, and that Melies' pictures are very much on the bad. They don't care about their stuff at all. Simply because they are usually a lot of travelogues, taken abroad, or, if they happen to be dramatic productions, they are of such very poor quality that they do not pull. Their players are unknown, and their settings are cheap and absolutely out of date. 2

Q. Have you noticed whether or not foreign pictures are falling off? A. Oh, yes, they are falling off in the last three or four years. 3

Q. By that I mean in number? A. Oh, yes. Oh, yes.

Q. Do you show as many of them as you formerly did? A. No.

Q. Are you solicited frequently by representatives of unlicensed exchanges? A. I can say without hesitation, every day in the week.

Q. And what do they offer you with respect to prices and service? A. Well, their prices seem fair enough, that is, film to film, if quantity counted anything, but the quality is not there. 4

Q. Do they offer you a complete program? A. Yes.

Q. Do they have specials? A. Yes.

Q. Do they have release days themselves? A. Oh, yes.

Q. Did you tell us the kind of projecting machine you are using? A. I am using the Powers machine.

Q. Have you used a Powers right along in the last few years? A. I have always used the Powers. I have a Standard machine in the house, but it was there when

- 1 I took hold of it, and it stands as an emergency machine.

- Q. Can you say from your experience as an exhibitor, during the years regarding which you have testified, whether or not, the licensed motion pictures are improving in artistic quality, photography, excellence, and range of subjects? A. Yes, I think the photography has now reached the highest state of perfection. There is absolutely a flickerless picture on the screen, a thing that was out of the question two or three years ago. Three years ago, I should say. And as far as quality of plays goes, why, the
2 players are drawn from the very best ranks of the legitimate stage, and they pay very large salaries, I understand, for their directors, who follow up every detail, and special attention is given to their stage settings, and they do not seem to spare any expense. They can stage a thing for motion pictures that could not be shown on the theatrical stage.

- Q. Do you find that the popularity of your shows depends upon novelty, originality and artistic excellence? A. It depends largely on the temperament of your audience, and just where your theatre is located. Now, I find that
3 in certain locations, in lower Jersey City, that there is a class of people there who like things that are, well, savoring of great excitement, and action. They like cowboy pictures, and hold-ups, and bandits, and things of that kind. Then, if you were to take something, some episode in the life of Napoleon down there, you know they would not say anything going out, but they would look very much disappointed. They have heard of someone named Napoleon, but they could not quite figure out who he was. They know he was a Frenchman, but they would not
4 want to know anything more about him. Then, there are people who like things classy, so to speak. They like to see the Fall of Troy, or Romeo and Juliet, or Richard the Third, or something of that sort. Not these pikers over where I am now. They want something of every-day life, something not too deep for them.

Mr. GROSVENOR: Every-day life out West, you mean?

The Witness: Yes, and right down East, too. This

"Mother" gag goes a long way with them. If they can get that stuff, there is a little cry in between. The scrubwomen sit down, and they have a very fine evening's entertainment out of the modern prodigal's return homeward again, and all that stuff. The exhibitors know that, the exchange men know it, the producers know it. They know just what to give. They know they have to vary their programs in order to satisfy the different tastes of the public. And I know just what I have got to give my congregation over there in Jersey. I know just what they want, I know just what they are going to get, and I know just where I am going to get it. Right in the General Film Company's office.

1

2

By Mr. KINGSLEY:

Q. You are able to get the program you want for whatever audience you desire to serve? A. Yes, sir.

Q. And you can get it in advance? A. Yes, sir.

Q. And you can get it certainly? A. Yes.

Q. And you can advertise it safely? A. Yes, sir.

Q. And it will be produced on the day you have advertised to produce it? A. Yes, sir.

Q. And that is something you could not do prior to the formation of the General Film Company? A. It could not be done.

3

Q. Did I understand you to say that you had experience prior to the formation of the General Film Company with your competitor where you and he were showing repeaters, or having conflicting programs with your opposition? A. Why, back in the old days we would go over to the exchange—

Mr. GROSVENOR: What were the old days? Please give them.

4

The Witness: Before the advent of the General Film Company. You would go to that exchange, and you would not know just what you were going to get, and sometimes you would go over and say "Where is my show?" "There it is, there. It is waiting for you." And you will go to pick up what you believe to be your case, what they pointed out to be your reel case, and you would find that Bill Smith's show would be in that case, and his place would be, maybe

- 1 in Hackensack. Now, you have his reels, and in all probability you are paying twenty-five or thirty dollars a week more than Bill Smith, only he happened to get there before you, and he took the first film case that came along, and he dusted toward the Erie and took his train home and left the reels for you that were lying there when you got there. That was the reward of being late. There was no idea of being fair, or anything of that kind, unless you were one of these fellows that dipped down and gave Bill Brady or Sam Malinsky a couple of dollars at the end of each week in order that he will slip you the other fellow's case—but all men don't feel inclined to do those kind of things, and for that reason I think this kind of straightened up this film business more than anything else, because there are men who would not do that, and they demanded a good film service with a clean system, where a man could get just what he was paying for, and I think the exhibitors are getting that today.
- 2

By Mr. KINGSLEY:

- 3 Q. Did you in those day have any trouble in keeping a clear program from the opposition? A. Oh, yes, there was nothing but trouble. You could not keep clear of them.

Q. And when you say you could not keep clear, you mean to say you had conflicting programs? A. Conflicting programs all the time.

Q. What did you ever do to try to remedy that situation? A. Go over and holler over in the exchange, but that would not do any good. It would only give you the feeling that you had done the best you could under the circumstances, but that would not give you a change of pictures.

- 4 Q. Did you ever increase the price of service on the theory that perhaps you might be able to get it so much earlier that you would be clear of your competitors? A. Yes. You would beat him on the first reel and he would come back on the second reel and beat you out on that.

Q. At such times, did it frequently happen that the opposition was taking service from another exchange than the one that was serving you? A. Why, yes. In that event there was absolutely no hopes of keeping them apart. If one happened to be taking from the Vitagraph Exchange, we will say, and I was taking from Kleine, why, the Vita-

graph Exchange did not care for Kleine's men. Why should he get a headache for the other exchange? It was nothing in or out of his pocket. He was going to do the best for his particular customers that he could and there was no way of fixing matters up so that they could be kept apart. 1

Cross examination by Mr. GROSVENOR:

Q. Mr. Jefferys, your theatre is located in Jersey City?

A. Yes, sir.

Q. And you get your films from the 23rd Street branch of the General Film Company? A. Yes, sir. 2

Q. Then the films that you use every day are brought over from New York City to Jersey City? A. Yes, sir.

Q. And every day you send back from Jersey City to New York City the films which you have used the day before? A. Yes, sir.

Q. Prior to the formation of the General Film Company, did you do business with the Kleine Exchange? A. With the Kleine Exchange, yes, sir.

Q. And when the General Film Company took over the Kleine Exchange, the same men continued in the employ of the General Film Company very largely, didn't they? A. No. There was quite a change around. They seemed to change them from one exchange to the other so that they could become familiar, I suppose, with the different customers of the different exchanges. I don't know what the object was, but there was a change. 3

Q. You mean they kept the men employed, but took them to other branches of the General Film Company?

Mr. KINGSLEY: I object to that as calling for a conclusion of the witness regarding which he obviously can have no accurate or correct knowledge. 4

The Witness: Yes.

By Mr. GROSVENOR:

Q. Kleine was doing business at a certain place, wasn't he, when the General Film Company bought him out? A. Yes.

1 Q. The General Film Company took over the Kleine offices, didn't they? A. Yes.

Q. And they took over the Kleine employees very largely, didn't they? A. Yes.

Q. So that these men whom you have characterized as being so criminal, almost, in character, that is to say, they would, at times, take \$2.00 or less, or more, continued in the employ of the General Film Company thereafter?

2 Mr. KINGSLEY: I object to the question as being an improper summary of the preceding testimony of the witness, and not fairly based upon this evidence.

The Witness: No, sir. I think when I made that remark before—that statement before, about the \$2.00 gag being passed to the men at the end of the wicker, at any time you saw fit to pass him a bribe, that that was not just before the formation of the General Film Company, but quite a long time before.

3 By Mr. GROSVENOR:

Q. Then conditions were not as bad as they were, when the \$2.00 was being paid, in the period preceding the formation of the General Film Company? A. Well, they might not have been as bad. I really am not in the position to answer that, regarding the bribery and things, but things were bad enough. They did not show any—

Q. When was this period of extensive bribery practiced?

4 Mr. KINGSLEY: I object to the characterization of "extensive bribery—"

Mr. GROSVENOR: Well, he characterized it as a practice in his direct examination.

By Mr. GROSVENOR:

Q. When was this typical, if ever, of the rental exchange business?

Mr. KINGSLEY: I object to the characterization 1
that this was ever typical of the rental exchange bus-
iness, as not being a fair inference from the preced-
ing evidence of the witness.

The Witness: It was practiced in the early days of the
moving picture business.

By Mr. GROSVENOR:

Q. How many years ago? A. Well, I will say seven 2
years ago. When moving pictures first commenced to be a
commercial thing. Before that time you would see a
motion picture here and there in a beer garden, or a
theatre, or something of that kind. But there were no
moving picture theatres to speak of at that time, and when
the exchanges sprang up over night, it did not make any
difference whether that man was George Kleine, or Ad.
Kessel, or anybody else, it did not make any difference.
They were not directly responsible for the men under-
neath them. Because things were confused and all that,
and the exhibitors were the men that suffered.

Q. You would say that bribery ceased to be a prac- 3
tice at least six or seven years before the General Film
Company was formed? A. I don't say that.

Q. Well, when did it? A. Well, that would be a hard
question to answer—a hard question to answer. But, I
know that it did exist, and I know that it did exist up
to a couple of years, anyhow, before the formation of
the General Film Company.

Q. Did you ever pay \$2.00 to get another man's film?
A. I would not do a thing like that.

Q. I did not say whether you would do it. I say, did 4
you ever do it? A. No.

Redirect examination by Mr. KINGSLEY:

Q. One question. I recall that on your direct exam-
ination, you spoke of getting another man's show. Did
you call a bundle of films a show? A. Yes.

Whereupon, at 12:50 P. M., the hearing is adjourned
until 2:30 P. M. at the same place.

1

NEW YORK CITY. November 19, 1913.

The hearings were resumed pursuant to adjournment, at 2:30 o'clock P. M., November 19, 1913, at Room 159, Manhattan Hotel, New York City.

The appearances were the same as at the morning session.

Thereupon FRANK J. HOWARD, the next witness called by defendants, of lawful age, first duly sworn by the Examiner, deposed as follows:

2

Direct examination by Mr. CALDWELL:

Q. Where do you live, Mr. Howard? A. Boston, Mass.

Q. In what business are you engaged? A. In the theatrical business.

Q. In what branch of the theatrical business? A. Moving pictures and vaudeville.

Q. How long have you been engaged in the moving picture business? A. I first went into the business either in 1895 or 1896.

3 Q. In what capacity? A. As an exhibitor in 1896, but previous to that I was an exhibitor, giving entertainments in churches and in lodge rooms around, just with the small appliances that we had at that time.

Q. And when did you go into the exchange business? A. I think it was somewhere in 1902 or 1903, I am not positive, but along in there sometime.

Q. How long did you continue in the exchange business? A. Until I sold out.

Q. And when was that? A. In June, 1910.

Q. To whom? A. General Film Company.

4 Q. And in what branch of the motion picture business are you engaged at the present time? A. An exhibitor.

Q. Where are your theatres located? A. We have two in Boston, another in Lynn, and another one in Gloucester, Massachusetts, at the present time.

Q. Will you give us the names of these theatres? A. The new one we opened last Monday is called the Scollay Square Olympia, in Boston. The other is called Gordon's Olympia, in Boston. The one in Lynn is called The Olympia, and the one in Gloucester is called The Olympia.

Q. What is the seating capacity of these theatres? A. 1
From a thousand to three thousand.

Q. You have spoken of a theatre you opened in Boston on Monday last? A. Yes, sir.

Q. What is the capacity of that theatre? A. Very close to three thousand.

Q. And what was the cost of that theatre and its equipment? A. About a million and a half dollars.

Q. And you give motion pictures and vaudeville in that theatre also? A. Motion pictures and vaudeville, yes, sir.

Q. What is the name of the exchange that you conducted in Boston? A. When I first went into business or when I sold out? 2

Q. At both times. A. When I first went into business, I called it the Boston Film Exchange, and then I changed from that to the Howard Moving Picture Company.

Q. Then are you familiar with the conditions in the business in Massachusetts and throughout New England generally? A. I am.

Q. Both from the standpoint of an exhibitor and an exchange man? A. I am.

Q. Were you a member of the Film Service Association? 3
A. I was.

Q. You were an officer of that association? A. One of the Directors.

Q. During the year 1908, did you know about the litigation between the Edison Company and the Biograph Company? A. I did.

Q. Can you say whether or not that litigation had any effect on the business which you were then conducting? A. It had a very large effect and a very material effect on the business, as a great many were afraid to enter into business, and I am speaking not only of myself, but of many others 4
who were going into the business, and it was something that nobody knew the outs of it. They knew there was the litigation, and they were afraid to put any money into the business.

Q. As a member of the Film Service Association, you had an Edison exchange license? A. I did.

Q. And you later became a licensee of the Motion Picture Patents Company? A. Yes, sir.

Q. It is in evidence in this case that you were a member

1 of a committee that was appointed by the Film Service Association on or about January 9th, 1909, to confer with the President and other officers of the Motion Picture Patents Company with respect to the terms and conditions of the exchange license agreement that was offered by the Patents Company to the various exchanges at that time. Do you recall being a member of that committee? A. I do.

Q. Do you recall calling in connection with other members of that committee, on Mr. Dyer and Mr. Marvin? A. I do.

2 Q. Do you recall who the other members of the committee were? A. Well, I think there was a Mr. Clark and a party from Detroit, Mr. Gilligham, and, I think, Mr. Swanson and, I think, Roland, I don't know that Roland was, but Aitken, of Chicago, was on that committee, I cannot remember just now the committee.

3 Q. Do you remember what subjects were discussed by the committee with Messrs. Dyer and Marvin at that time? A. I will have to think, now, for a moment, what the subjects were. I think one of them was as to the return of film, if I remember well. I have been in so many of these confabs that I can't exactly remember the particulars of each one.

Q. Do you remember whether anything was said at that time about the collection of exhibitors' royalties? A. Yes, sir, I remember being on a committee of that kind in connection with—

Mr. GROSVENOR: Was it at the same meeting and the same committee?

The Witness: I think it was.

4 By Mr. CALDWELL:

Q. Well, what was said about the collection of royalties? A. First, there was a payment of two dollars per week demanded, and it was a question as to who should collect that, whether the exchange should collect it, or do business direct, or have the exhibitors do a direct business with the Patents Company, and certain of the exchange men didn't want to collect it, for the simple reason that they thought it would be an extra

expense in collecting it, and an additional expense in keeping books in regard to it. 1

Q. And what did Mr. Dyer say, at that time, about its collection? A. I will think over that now for a moment. I believe at that time they did business direct with the exhibitors, and that was changed over afterwards to the exchanges taking charge of it.

Q. You mean that at first it was agreed that the Patents Company would collect direct from the exhibitor? A. Yes, sir.

Q. What, if anything, was said, at that meeting, in reference to the so-called fourteen days' cancellation notice clause in the exchange license agreement? A. Yes, there was a clause to that same effect brought up there, and what they wanted to—well, let me see—the fourteen-day clause—I have to think a moment on that, you will have to pardon me. 2

Q. Well, I will put another question: The committee, or some member of that committee, wanted that clause eliminated, didn't they? A. Yes, sir, that was so.

Q. And what did Mr. Dyer say about that? A. I could not remember now, his exact words. I can't remember what that part was. 3

Q. Did he say it would not be enforced? A. Oh, no.

Mr. GROSVENOR: I object to that as leading.

The Witness: We were always given to understand that it would be enforced, the fourteen-day clause, for any violations of the license, or anything of that kind.

By Mr. CALDWELL:

Q. Are you prepared to say, Mr. Howard, that Mr. Dyer told you, or any other member of the committee, at that time, that that clause would not be enforced? 4

Mr. GROSVENOR: Object to the form of the question as leading, the witness having stated that he didn't recall what Mr. Dyer stated.

The Witness: No, sir; he did not.

1 By MR. CALDWELL:

Q. Did you have any experience before the organization of the Patents Company with the practices of sub-renting by exhibitors, in your district? A. I did. It was not exactly a general thing, but there were a great many of the exhibitors who took advantage of the sub-renting of films, especially if he was a little distance from Boston. He would take the film, and he would use it probably a day or two, and then send it to some other theatre.

2 Q. Did you take any measures to discourage it? A. We did.

Q. What did you do? A. Only such methods as we could, in writing letters and going to see them, and threatening not to send them any more films, and, in some cases, we did take away their service.

Q. Well, could you stop it, or did you stop it entirely? A. No, we could not stop it.

Q. And why not? A. It seemed to be a physical impossibility to stop it all.

Q. You could not stop it? A. We could find no way of stopping it.

3 Q. Did you regard it as an evil in the business at the time? A. I certainly did. It only took another exhibitor away from you—another rental man away from either my exchange or some other exchange.

Q. Prior to the organization of the Film Service Association was it your practice to put in standing orders with any of the producers or manufacturers of motion pictures? A. We had a few standing orders with a few of the manufacturers, as far as I can remember, I am not exactly positive how many, but I know I had a few.

4 Q. The Edison exchange license agreement provided for a minimum, or the leasing of a minimum quantity of film, twelve hundred dollars per month? A. Yes, sir.

Q. When the Edison license exchange agreement was tendered to you did you object to that? A. I did not. I do not see how any exchange could get along with so small a quantity of film.

Q. Do you recall that that minimum was increased under the Motion Picture Patents Company's exchange license agreement, to twenty-five hundred dollars? A. Yes, I believe it was \$2500. I didn't pay much attention

to it, because I was one of the biggest buyers, and they quoted me as one of the biggest in the United States. 1

Q. Based on your experience as an exchange man, could any exchange property serve its customers, if it took less than twenty-five hundred dollars' worth a month? A. It could not, and I do not see how they could serve them even with that amount.

Q. As a member of the Film Service Association were you acquainted with the most of the exchange men engaged in business throughout the country? A. Yes, sir, I was. I think I knew a majority if not more than seventy-five per cent. of them. 2

Q. And from what business ranks had the majority of those exchange men risen? A. Well, I don't know exactly from what ranks, but I know there was quite a number who were very undesirable elements in the film business.

Q. Had many of them formerly been engaged in the circus business, or dime museum business? A. The majority of them.

Q. And as a general rule, what was the financial condition of the average exchange man? A. Very poor. 3

Q. Were there many so-called junk exchanges in existence at that time? A. A great many, before the formation of the F. S. A., and also, after that time; a great many were eliminated when the F. S. A. started.

Q. Well, what effect, if any, did exchanges of that kind have on the business? A. Well, if they had kept on doing business the way they did at that time, it would probably have exterminated the moving picture business all over the country.

Q. Why so? A. A lot of exchange men went into business and all they did was to buy up old, second-hand films, and I sold a great deal myself, of such as I would not use myself, or I would not want to accept, and they took this and opened exchanges, and some, I know one or two, who opened their business in their lodging houses, and peddled their films around from one theatre to another. 4

Q. What has been your experience where there are two competing exchanges operating in the same territory, each getting their pictures from a common source of supply? A. Well, it has always been a very bad experience, especially if the two exchanges don't work together. It was al-

1 ways that each exchange was trying to give the theatre the latest films they possibly could, and, if one man advertised a certain show for tomorrow or the day after, his competitor would try and get it a day ahead. That was the universal rule all over New England, and, I think, all over the United States.

Q. Did it result in a conflict of programs? A. It did.

2 Q. Did it result in repeating programs? A. Yes, it resulted in conflicting and in repeating, and a great many people who I know entered into business—I knew people, new people who would go into the business, and when they would come in they would state, “I am going to open a theatre in such and such a town. Now, I have got a competitor here, and we have got to kill him right away.” They did not think of anything further than that, they wanted to kill the man in business in the town. And they would say, “We must have later films than what he is using.” Now, we had a standard rate, the two exchanges there at Boston, and we had what we called release dates on different subjects throughout New England. For instance, if he was at Salem, we would agree amongst ourselves not to send any film there until it was nine days old, and in New Bedford probably two weeks old. I am just stating those. When a new man came in, the first thing he wanted was the latest film, and I stated that it would cost him about twenty-five dollars a week more than the standard, and he said, “I am willing to pay that,” and I would say, “All right, I am going to write to the man up there that is my customer, that you are going to get the later films, and it will only raise his ante twenty-five dollars,” and if he was the competitor’s customer, the competitor would only have to charge him more, and in that way they were killing each other in the business, and not doing themselves any good.

4 Q. Can two exchanges, serving the same territory, from a common source of supply of pictures, each taking, say, twelve or fourteen reels per week, give a better service than one exchange alone, taking, say, twenty reels a week? A. Well, one exchange can satisfy them a great deal better than two exchanges, for the simple reason they can balance their programs, and a great deal depends on that, and what I mean by balancing them, give a variety of film like, probably a sensational story, a comedy, or a drama, and

then it would also save conflicting, if there were any competitors, keep their programs apart, and also eliminate repeaters. 1

Q. Now, while you were in the exchange business, did you ever resort to the practice of circuiting your film? A. Only in a very few instances, or cases.

Q. In what character of cases did you circuit your films? A. It was only up through Maine, and, as I stated, in New Hampshire, probably in very few cases. It was something that was not satisfactory to the exhibitor.

Q. And why not? A. In circuiting film, there was, at that time, and there is yet, a great many places where there are inexperienced operators, and in a great many cases poor machines, and they would leave the films in bad condition, and it was sent from one theatre to another, and probably by the time it got around to three or four theatres, you would not be able to use it. I always, invariably, had the film sent back to the exchange, and then examined. 2

Q. Were the films examined every time they came from a theatre, before they went out to the next? A. Yes, sir, the film never went out of the office without being examined. 3

Q. Do you recall when the release day system first commenced? A. At about the time of the formation of the F. S. A.

Q. Did you approve or disapprove of it? A. I approved of it.

Q. Why so? A. It gave me better opportunity to supply my customers—it gave me a positive source of supply.

Q. And why was it more satisfactory to the exhibitors? A. Well, they could advertise their programs ahead, and certainly they could put on a great deal better show for their patrons. 4

Q. Do you recall that in the Edison license there was a requirement that the film, although purchased, nominally, should be returned after the expiration of six months? A. I do.

Q. Were you in favor of that provision? A. At first I was not in favor of it, but after due consideration I thought it was a very good idea.

Q. Why? A. It put a lot of the old film and films

1 that were in bad condition, out of the market. I was always looking for the advancement of the business.

Q. And why was it desirable to put the old film out of the market? A. They could give a great deal better show with the new film than they could with the old. It would only kill the business if they kept on showing the old film.

Q. What was your experience with respect to the condition of the film after it had been in very constant use for a period of months? A. That depended on the operators and the machine it was run over.

2 Q. I mean on an average? A. Well, it was scratched, what they called "rainy."

Q. And it gave a very poor exhibition? A. Naturally so.

Q. At the time you signed the license exchange agreement with the Patents Company did you have any old film on hand? A. Yes, sir, I did.

Q. And about how much? A. I should say in the neighborhood of about a thousand reels.

3 Q. Did you have to return that film or any part of it before the Patents Company would grant you a license? A. No, sir.

Q. Do you recall when it was you first commenced to return film to the manufacturers after you became a Patents Company licensee? A. Well, the requirement was, I think, six months, but I think they extended that, but I am not positive on that point, but it seems to me it was extended a few months longer than that before we sent the first back, and then we sent back anything we had in the exchange.

4 Q. Did the requirement operate to prevent you from accumulating a reserve of scenic or educational or scientific pictures if you wished to do so? A. No, sir.

Q. Did you ever keep any film of that kind on hand? A. I did.

Q. You may state whether or not in Boston and in the territory generally throughout Massachusetts a great many pictures of that kind are used? A. Well, there is more demand for scenics these last few years than there was several years ago.

Q. Is there any law in Massachusetts which operates to

bring about that result? A. Well, we have a Sunday law that we can only show certain films. 1

Q. And under that Sunday law you can show only scenic and educational and topical films? A. That is about all, or a very light drama.

MR. GROSVENOR: What do you mean by "light drama?"

The Witness: Anything without blood and thunder in it, no shooting or anything of that kind, no murder scene in it. 2

By Mr. CALDWELL:

Q. Do you recall that under the Patents Company license you could only lease the film and not buy it? A. I do.

Q. Did that requirement operate to prevent you obtaining any greater use of the film than under the Edison license agreement? A. No, sir.

Q. In other words, the film has outlived its usefulness after six months, anyhow? A. It certainly has. 3

Q. Is there any demand in your territory on the part of the public to see the newest pictures that came out as soon as they came out? A. That is the cry from everybody, both from the exhibitor and from the public. They go where the latest films are shown.

Q. This demand for new film comes in because of the releases and the release dates prescribed by the producers, or from the public itself? A. From the public, itself.

Q. Are there not natural or geographical limits within which an exchange may operate advantageously? A. Well, I always localized myself. I could not see how a great many exchanges that I knew of could send films a great distance. Films get old so quick, that if you send them any distance a good part of their usefulness would be lost in the transportation. I never sent any films outside of New England, only to a few places in Connecticut that were near New York. 4

Q. Having an exchange in Boston, could you successfully compete with an exchange operating in Pittsburgh or in that territory? A. I would not try to.

1 Q. Are not the disadvantages of having to ship the film to such a distance such that you could not make money in competing with such an exchange? A. I do not see how anybody could do business of that kind.

Q. During the time that you conducted a license exchange, both under the Edison regime and under the authorization of the Patents Company, do you know whether or not the licensed producers, manufacturers, were competing among themselves? A. They were. They were competing very largely amongst themselves.

2 Q. In what way would you say that competition showed itself to you as an exchange man? A. Well, they were all trying to sell the biggest quantity of film, the largest quantity of film, and there certainly was a great call from the exhibitor, and they certainly received their call from the public for what films they wanted—I bought of some films as high as five prints, others, only one. I had a standing order for a long time for five prints of one certain company of everything they turned out.

Q. Were you in receipt of circulars from any of the producers urging their pictures upon you? A. Yes, sir.

3 Q. Do you know whether they advertised extensively in the trade journals? A. They advertised in the trade papers, also they sent their circulars to the different exhibitors.

Q. You were an exhibitor at that time? A. Yes, sir.

Q. And you got circulars of that character? A. Yes, sir.

Q. Describing their pictures? A. Yes, sir.

Q. And urging the exhibitor to— A. To make demand on the exchanges for them.

4 Q. Did you find in your territory that the popularity of the pictures of certain producers varied from time to time? A. I did not find much variety—I mean I did not find that they varied much, for there were certain producers' pictures that always seemed to be in demand, and they had certain actors who seemed to have a following the same as stock companies that play in a local territory.

Q. Was the public in your territory familiar with the personality of the different actors and actresses as they were shown upon the screen? A. I think they were more familiar with them than I was myself, they seemed to be, and they seemed to take more interest in them.

Q. Did you ever hear of a motion picture fan? A. Yes, 1
sir, a great many of them.

Q. What is a motion picture fan? Reference has been made to them in this record. A. A motion picture fan is one that attends one theatre every day, at least once a day, if not two or three times. That is what we call a motion picture fan.

Q. Did you find that the pictures produced by some of the licensed manufacturers increased in popularity from time to time? A. They did.

Q. Do you know whether there is any competition in Massachusetts, and throughout New England generally, between the so-called licensed producers, and the unlicensed producers of motion pictures? A. There is great competition. I know that even in the theatres that I am connected with, we are always having calls from the different producers, or from the independents, telling us what a great improvement they have made over the past, and to come and see them. 2

Q. And that is the fact, isn't it, that they have made great improvement? A. Yes, they have made wonderful strides in the last few years. 3

Q. You have seen a great many of their pictures? A. Yes, sir, I have.

Q. And, in point of artistic photography, and excellence, do they compare favorably with the pictures produced by the licensed producers? A. They do at the present time.

Q. You are constantly being solicited by the so-called independent exchanges for your business? A. Yes, sir, we are.

Q. Do you happen to know how many motion picture theatres there are in Boston? A. I do not.

Q. Well, in point of numbers, are you in a position to say how the number of theatres owned by the so-called independents, compares with the number of the so-called licensed theatres? A. Well, I should say they were about evenly divided, if the number is not in favor of the independents. Now, near where we opened our new theatre last Monday, within four or five hundred feet, there are three theatres, and they are all using independent films, and the next one nearest to them is another independent, and then two licensed ones. 4

1 Q. When did you sell your exchange to the General Film Company? A. It was in June, 1910.

Q. When did you first consider selling it? A. I was trying to sell my exchange for over a year previous to that.

2 Q. Well, would you state the circumstances that led up to the sale of your exchange? A. Well, I believe Mr. Kleine's manager and myself, received a letter to come over to New York. I didn't know what it was about, but I came over to New York from Boston. I was called over here, and I met Mr. Kleine, and we went up to, I think, the Patents Company—I went up there, rather.

Q. And who did you see up there? A. All the manufacturers were there. I met a Mr. Rock there, Mr. Lubin, and there was Mr. Kleine, Mr. Selig, Mr. Long, and there was also a Mr. Singhi there, and I can't remember that there were any more there, but I can remember them.

Q. With what company did you understand you were dealing in the matter of your selling your exchange? A. I thought it was the Patents Company.

3 Q. Did you think you were dealing with, or selling to the Patents Company, or the General Film Company? A. The General Film Company.

Q. You entered into a written contract for the sale of your business with someone? A. Well, we just had a verbal understanding that day.

Q. And later on you had a written contract? A. Yes, sir.

Q. With whom was that written contract made? A. With the General Film Company.

4 Q. State what transpired at this meeting? A. Well, the subject was brought up if I wanted to sell my exchange, and I told them I had tried to sell it for over a year, and I asked them what price would they give me, and they stated the price, and after a little conversation I told them I would accept it.

Q. What was the price that they stated? A. It was eighty thousand dollars—thirty thousand dollars in preferred stock, and eighty thousand dollars in payments.

Q. Had you attempted to sell your exchange before this? A. I had, to several people, and the best price I could have gotten was twenty-five thousand dollars.

Q. What profits were you making from your exchange, what were your annual profits? A. I should say something about twenty or twenty-five thousand dollars. 1

Q. Well, did you think that one hundred and ten thousand dollars was a fair price? A. I did.

Q. Did you consider the exchange business as a stable one at that time? A. I didn't consider the show business or the exchange business what we would call exactly a stable business. I think the price I got for it was a good price, considering the money I was making. It is not like any other business, where a person could live on ten per cent. It is more or less of a gamble. 2

Q. Had your business been increasing for some time prior to the sale or not? A. It had been increasing in a very small way. It pretty nearly had come to a good standard basis.

Q. Is there any speculative element that enters into an exchange business? A. It is about all speculation, I should call it.

Q. At the time you sold, did you have in mind the fourteen-day notice or cancellation clause in your license agreement? A. No, sir, I did not. 3

Q. Would that have made any difference to you? A. No, sir.

Q. Were you afraid that if you didn't sell, the Patents Company might cancel your license? A. No, sir.

Q. Was any threat or intimation made to you by the General Film Company or any officer of the General Film Company or anybody else, that if you didn't sell, your license would or might be cancelled? A. No, sir.

Q. Was there a sufficient supply of so-called independent or unlicensed film available at that time to have enabled you to conduct an exchange business or to continue your exchange business, if you had been cancelled by the Patents Company? A. Yes, sir, there was. 4

Q. Could you have gotten along well enough in your business to have continued serving your customers? A. I would have continued business if I had intended to stay in the business. I could have continued the business by taking the unlicensed film.

Q. Did you make any agreement with the General Film Company, direct or indirect, not to re-engage in the exchange business? A. No, sir, I did not.

1 Q. Prior to the time you sold, in June, 1910, and subsequent to the organization of the Patents Company, say in January of 1909, what competition did you have with other exchanges in Boston? A. Well, there were only two of us—then there was a third one went in there, and the two of us got along very nicely, and when the third one came in there, he made it very unsatisfactory. He would go amongst the customers and make them all kinds of promises, and even made threats that if they would not do business with him, he would open another house in the neighborhood, but I believe he lost his license later, on account of the methods
2 he was pursuing.

Q. Well, do you know of any case where he actually carried out such a threat? A. Well, I couldn't recall the name, just where it was, but I know there was a party came in to see me and told me that he would have to cancel me—

Mr. GROSVENOR: I object to that as hearsay.

The Witness: That he would have to cancel me if he didn't do business with my competitor, as he was going to open up another house right near him if he didn't take
3 service from him.

By Mr. CALDWELL:

Q. What did you mean by that, that "he was going to cancel me"? A. Cancel my service.

Q. Is there any such thing as a market price of service to an exhibitor? A. There is not.

Q. On what does the cost of service to an exhibitor depend? A. On the age of the film, mostly; also, it varies some in the small towns, but they get old films. If it is a
4 small town, why, you make it as low as you possibly can, on account of the trade of the town and the size of the town.

Q. Does an exchange try to get as much as it can from a customer? A. That is natural, yes, sir.

Q. Does it often happen that in the same territory, one exhibitor is paying more than another for exactly the same class of service, based upon age? A. That has been known.

Q. Was there any improvement in the class of service to exhibitors rendered by the exchanges in your territory subsequent to the formation of the Motion Picture Patents

Company? A. Well, there has been improvement in the films, I think, constantly for the last—well, ever since the formation of the Film Service Association. 1

Q. I am referring now to the service given by the exchange to the customer? A. I don't quite understand what you mean.

Q. Well, is the service any more regular than it was before? A. Why, since the General Film?

Q. Well, since the formation of the Patents Company? A. Well, since the formation of the Patents Company, yes, a great deal more regular. 2

Q. Now, how is it since the General Film Company commenced operations in Boston? A. Well, I think it is about the same as it was formerly, for the same reason, that the two exchanges there were conducted in a very nice, straight, businesslike way.

Q. And with regard to avoiding conflict of programs? A. There was always an understanding between the other exchange and myself so that we would not conflict, that was, to the best of our ability, we did that.

Q. Before you sold to the General Film Company, you were in competition with the unlicensed exchanges in Boston, were you not? A. I was. 3

Q. Did you notice any difference in the stability of the business subsequent to the organization of the Patents Company? A. Why, there were more theatres built and more money put into the business, and it seemed to have more of a business standing, and people were not afraid of the business as much as they were before, when the litigation was going on. That seemed to be a settled thing then.

Q. What was your practice with respect to the selection of the programs by exhibitors? A. We showed all our films to the exhibitor—they came in from all the surrounding towns, that is, the majority of them, and all films were shown three days before releases, or two or three days before release days, one on Tuesday and the other on Friday. All reels that we released on Monday were shown on Friday. Those on Tuesday, would be shown the following Thursday. We only released twice a week. Most all over the country they release every day. 4

Q. By "release" you mean that there was a change of program by the exhibitor twice a week in Boston? Was

1 that done throughout New England? A. Yes. And then an extra release on Sunday on account of only the few films that are shown on Sunday.

Q. And your exhibitors selected their own programs? A. They did.

Q. Well, how did you manage to prevent conflicting programs where the exhibitors made their own selections? A. Well, there was an understanding that the exhibitors had amongst themselves to keep away from one another as much as they possibly could.

2 Q. I think you have stated that at various times that you have been interested in different branches of the theatrical business, have you not? A. Yes, sir.

Q. You still are in the vaudeville business? A. Yes, sir, all of our theatres are vaudeville and pictures.

Q. What percentage of motion pictures exhibited in your theatres are of a theatrical character? A. Well, I should say, at least seventy-five per cent., I should think, if not even more than that, are dramas or something similar to them that pertain particularly to theatres.

3 Q. In booking vaudeville acts for your theatres do you insist on obtaining vaudeville acts that have not theretofore been presented in Boston at any other theatre? A. All of our vaudeville acts are booked in New York, and we insist on new acts, and in all the contracts they read—there are four or five terms there—one is, “When did you play Boston last?” and one is, “When have you played Boston?” and also the contract not to play Boston until they play us, and no other house in Boston.

Q. Is it your experience that the public objects to seeing for a second time a motion picture play in the same way they object to seeing for a second time a vaudeville act?

4 A. To a great extent.

Q. Do you regard the non-conflicting program in motion pictures to be just as important as in the theatrical and in the vaudeville business? A. Every bit as important.

Q. And you advertise your programs in advance? A. We do, and we get synopses out, of all the late pictures, and give them out three days before they are shown.

Q. The local conditions, particularly the patronage of a theatre, the character of the people who attend the theatres in any given district, does that have anything to do

with the character of the program that you would exhibit in your theatre? A. Well, yes, when we advertise some player or some actor that they all know, it seems to have an increase in the attendance. 1

Q. Does the question whether the patronage is transient or permanent, have anything to do with it? A. Yes, that has a great deal to do with it.

Q. Does that have anything to do with the age of the film that you exhibit? A. Well, the age is the principal thing to all exhibitors.

Q. As an exhibitor, has there ever been any pressure made on you by your exchange, the General Film Company, to induce you to take any particular kind of service in preference to another, or are you left free to select for yourself? A. No, sir, we are free to select. They carry on their exhibitions there twice a week, the same as I did. 2

Mr. GROSVENOR: You mean you are free to select from the pictures of the General Film Company?

The Witness: Yes, sir.

By Mr. CALDWELL: 3

Q. And are you free to select other pictures if you want them? A. Yes, sir.

Q. There is absolutely no restriction on you as to the character of pictures that you present in your theatres? A. No, sir, we show the Famous Players in one of our theatres in connection with the licensed film, three days a week.

Q. Do you ever show Kinemacolor in any of your theatres? A. No, we have never gone into Kinemacolor. 4

Q. Did the General Film Company proceed to advance prices to the exhibitor after you were bought out? A. Not that I know of.

Q. Are you paying substantially the same prices for your service in your theatres that you did before the formation of the General Film Company, for the same quality of service? A. We are paying the same.

Q. Have you noticed any improvement in the quality of pictures that have been turned out in the last two or three years? A. You can see a daily improvement. There

1 is improvement all the time, both in actors and in photography.

Q. What kind of projecting machine have you used and are now using in your theatres? A. We are using in one of our Boston houses, two Motiographs, and in another one, a Motiograph and a Powers, and in another one a Powers and an Edison.

Q. What model? A. All late models.

Q. And what projecting machines were you using in say, December, 1908? A. Powers, we were using to a great extent then. Powers and Edison.

2 Q. And what models of the Edison? A. Well, the model made at that time. I always kept up to date and kept the latest machines.

Q. Has the General Film Company promptly made all the deferred payments under your contract? A. Yes, sir.

Q. When they became due? A. Yes, sir.

Q. You got your stock? A. I have.

Cross examination by Mr. GROSVENOR:

3 Q. Mr. Howard, you have testified on your direct examination that a majority of the rental exchange men have risen from the circus or dime museum, is that right? A. To my recollection, a great many of them.

Q. And do you think that that is to their discredit, or the fact that they may have risen from that source indicates that their character is discreditable? A. I do not.

Q. But it gives a prima facie presumption? A. Well, I might say that I have risen from that myself. I was a circus man when I was quite a young boy, but I notice a great many of the exchange men still have that same old desire to do what they did with the circuses.

4 Q. That is, they have not improved in character? A. I guess that is where you get it.

Q. You, then, did use that phrase on direct examination in a disparaging sense, didn't you, that is, as giving an impression that the rental exchange men as a class were not men of the highest reputation and character? A. A great many of them.

Q. Were not? A. Were not.

Q. And in order to give that impression, you stated the

origin from which many of them came, is that right? A. Yes. 1

Q. Now, Mr. Howard, isn't it a fact that quite a large number of licensed manufacturers have risen from the same source? A. I think they have.

Q. Are these licensed manufacturers, though, men who, like yourself, have improved in character, as time went on? A. Well, I would not like to state that. I suppose they have. I don't know as I have improved.

Q. Who are some of these manufacturers who have risen from the ranks of the circus and the dime museum? A. Well, Mr. Selig was in the circus business, and so was Mr. Rock. 2

Q. And was Mr. Smith, Albert E. Smith? A. Albert E. Smith was in the vaudeville line.

Q. He was a sleight-of-hand performer, wasn't he? A. Yes, sir.

Q. Who is the third man with Rock and Smith? A. Blackton.

Q. Well, those three men, Blackton, Rock and Smith, were in a sort of traveling tent show, weren't they? A. Well, I don't know that it was a traveling tent show, but Mr. Rock, I know, was in the circus business, but I was always given to understand that Mr. Blackton and Mr. Smith were in the vaudeville line, as a vaudeville team, the same as any act in vaudeville. 3

Q. And one called the people in, and the other sold the tickets, and the other gave the performances—of those three, isn't that the fact? A. I don't know anything about that part, sir.

Q. Who are some of the other licensed manufacturers who rose from the same ranks of the circus and dime museum? A. I only mentioned those two. 4

Q. Do you recall any others? A. I do not.

Q. How about Lubin? A. I have been given to understand that Lubin sold goods in exhibitions.

MR. CALDWELL: What kind of goods?

The Witness: Optical goods.

1 By Mr. GROSVENOR:

Q. What kind of exhibitions? A. Like mechanics' fairs, and different big exhibitions they have in different parts of the country.

Q. You mean he sold colored spectacles, and things like that? A. No, no. A regular optician.

Q. Do you recall any of the others of the licensed manufacturers who were also in the business of amusing the public, besides those you have named, before they became manufacturers? A. I was not acquainted with any of the
2 rest, I don't think.

Q. When you came down to New York, and say you met these manufacturers in June, 1910, at the Patents Company office, in regard to the sale of your business, some of the men present were these men you have named, Lubin, Selig, Rock, Smith and Blackton? A. Yes.

Q. Who was the man that did most of the talking with you, and the treating in connection with the sale of your property? Was it Kennedy? A. I think it was Kennedy.

Q. And Kennedy was a sort of a leader of these other
3 men in the General Film Company?

Mr. KINGSLEY: I object to that as calling for a conclusion of the witness.

The Witness: He was at that time.

By Mr. GROSVENOR:

Q. What was Kennedy's origin? A. I don't know.

Q. Do you know whether or not the fact is, that he
4 was a lawyer? A. I don't know as I remember. I don't know as I ever heard.

Q. You testified on direct that you were one of the biggest buyers of the rental exchanges. Who else were among the biggest buyers? A. I said I was supposed to be. If you will look over it, you will see—

Q. Who else were supposed to be big buyers besides yourself? A. Well, there was Mr. Flintom, in Kansas City, and I think it was Clark & Rowland, of Pittsburg. I believe we were supposed to be the three that were about the biggest buyers.

Q. And who were some of the other big buyers? A. Well, I have mentioned those three. I can't recall now, any of the others. 1

Q. You testified on direct that you reached this verbal contract in June, when you came down, and then you went back home? A. No, sir.

Q. Well, the result of the first meeting, that is, of the conference that you had, after you came down from New England, was a verbal contract—didn't you so state on direct examination, and that later the matter was embodied in a written contract? A. Oh, yes, yes. 2

Q. Then the result of the first conference when you came down in June was a verbal contract? A. It was verbal, yes, sir.

Q. Then you went back? A. Yes, sir.

Q. And then the papers were sent to you? A. They were not sent to me until some time after that.

Q. Then you came down again, didn't you? A. I don't know as I did. I cannot remember coming back again. I gave the exchange up the first of July—turned my keys over.

Q. Please look at the minutes of the General Film Company of June 23rd, 1910, printed in the record in part, as Petitioner's Exhibit 79, Volume 1, page 262, and so forth. I direct your attention to the bottom of the page, 263. Does the reading of those minutes refresh your recollection as to your coming down again in June on this subject of the sale of your exchange? A. Yes, it does. Yes, I remember that now. I had forgotten that part of it, sir. 3

Q. You had objected to certain terms of the contract, particularly relating to the deferred money payments, without interest? A. Without interest. I did. 4

Q. When you sold your business, the deferred money payments ran through a period of how many years? A. Five years.

Q. And were you allowed any interest on those deferred money payments? A. No.

Q. Some of them have not yet been paid? A. No, sir.

Q. That is, they have not been paid? A. They are all paid up as far as they are due.

Q. But there are still some payments to run for some time? A. Yes. For a couple of years more, I believe.

1 Q. Do these minutes refresh your recollection in any manner, as to the conversations you may have had with Mr. Kennedy, and the other officers and directors of the General Film Company at this interview, in connection with the sale of your property? A. It does.

Q. Please state, to the best of your recollection, what those conversations were. A. I remember coming back the second time, and I had an idea that there was interest due, and I took it up with them, and they told me there was not. That was the understanding. And I told them it was a misunderstanding on my part. And they held a meeting and said that they could not see how they could pay me interest; that that was the way they bought the exchange. It was perfectly agreeable to me then, if that was the understanding.

Q. Your Boston exchange reached exhibitors in Maine, did it not? A. Yes, sir.

Q. And New Hampshire? A. Yes, sir.

Q. And Vermont? A. Vermont.

Q. Rhode Island? A. I did some business in Rhode Island.

3 Q. And some business in Connecticut? A. Very little in Connecticut.

Q. And considerable in Massachusetts? A. Yes.

Q. At the time you sold out, as I understand your testimony, there were two licensed exchanges in Boston? A. Yes, sir.

Q. And these licensed exchanges were, at that time, in your judgment, conducting a rental exchange business in a businesslike way, that is, in a manner not conflicting with each other? A. That is right.

4 Q. Prior to that time, there had been a third rental exchange whose license had been cancelled by the Patents Company? A. Yes, sir.

Q. There did not then exist in your locality any unsatisfactory competition or irregular competition between the licensed exchanges which necessitated the sale of those exchanges to the General Film Company? A. No. No, sir, there was not.

Q. When the Patents Company was formed, did you own any theatres? A. Yes, sir.

Q. Did those theatres take out licenses or become so-called licensed theatres? A. Yes, sir.

Q. And paid the royalty? A. Yes, sir. 1

Q. And thereafter showed only licensed pictures? A. Yes.

Q. And how long have you been showing in any of your theatres, pictures that were not licensed? A. Now, I cannot remember; it is only lately we took on the Famous Players.

Q. Up to the time you took on the Famous Players, you had not displayed any independent films? A. No, sir.

Q. And are the Famous Players the only independent films which you have shown in your theatres? A. That is all. 2

Mr. GROSVENOR: That is all.

Redirect examination by Mr. CALDWELL:

Q. You have no connection with the General Film Company now, have you? A. No, sir.

Q. Your relation with the exchange ceased since you sold? A. Yes, sir.

Q. You did not continue to conduct the business for the General Film Company— A. No, sir. 3

Q. As a manager? A. No, sir.

Q. Were you reimbursed by the General Film Company the thousand dollars that you had paid or agreed to pay for attorney's fees in Boston? A. Yes.

Q. And on June 25th, the date on which you appeared before the directors and took up with them the question of the misunderstanding about interest payments, you had not at that time actually turned over your exchange? A. No, sir.

Q. You stated, I think, that the exchange was not turned over until July 1st? A. July 1st. 4

Q. So you were perfectly free to rescind the transaction or not to consummate it if you had seen fit to do so? A. Yes, sir.

Q. And it was on this occasion that you raised the question of the thousand dollars attorney's fees? A. No, that was brought up, I think, when I came over the first time. I could not be positive on that, but I think it was.

1 Recross examination by Mr. GROSVENOR:

Q. Mr. Howard, these minutes referring to those attorney's fees, say this: "Mr. Howard also informed the Board that certain legislation had been under way in the State of Massachusetts, and that his exchange and the Kleine Optical Company of Boston and certain exhibitors had employed the services of an attorney to look after the interests of the moving picture business in that State, and that the attorney's fee would amount to about \$1,000." What was that legislation under way in the State of Massachusetts?

2 A. Oh, there was a lot of legislation under way there. There was one put in there that no picture could be shown over ten minutes without an intermission of five minutes, and there was another one, I believe, that no picture could be shown after 5 o'clock in the afternoon. And, I think, something else like that. There was a lot of those things that I guess people hatched up, that wanted to make a little trouble for the moving picture people.

Q. And it was in order to eliminate that trouble that the attorney took a fee of \$1,000? A. We owed that—that took care of that for about two or three years. That was not all
3 in one year. We owed some money previous to that, and it had not been paid.

Whereupon, at 4:10 P. M. on this Wednesday, the 19th day of November, 1913, the hearings are adjourned until Thursday, November 20, 1913, at 10:30 A. M., at the Hotel Manhattan, New York City.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<p style="text-align: center;">UNITED STATES OF AMERICA, Petitioner,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">MOTION PICTURE PATENTS CO. and others, Defendants.</p>	}	<p style="text-align: center;">No. 889.</p> <p style="text-align: center;">Sept. Sess., 1912.</p>
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NEW YORK CITY, November 20, 1913.

The hearings were resumed pursuant to adjournment at 10:30 o'clock A. M., November 20, 1913, at Room 159, Manhattan Hotel, New York City.

Present on behalf of the Petitioner, Hon. EDWIN
P. GROSVENOR, Special Assistant to the Attor-
ney General.

3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. CHARLES F. KINGSLEY,
GEORGE R. WILLIS and FRED R. WILLIAMS,
appearing for Motion Picture Patents Com-
pany, Biograph Company, Jeremiah J. Ken-
nedy, Harry N. Marvin and Armat Moving
Picture Company.

J. H. CALDWELL, Esq., and H. K. STOCKTON, Esq.,
appearing for William Pelzer, General Film
Company, Thomas A. Edison, Inc., Kalem
Company, Inc., Pathe Freres, Frank L. Dyer,
Samuel Long and J. A. Berst.

4

Mr. HENRY MELVILLE, attorney for George Kleine,
Essanay Film Manufacturing Company, Selig
Polyscope, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph
Company of America, and Albert E. Smith.

- 1 Thereupon, JOSEPH FORSTER, the next witness called by defendants, of lawful age, being first duly sworn by the Examiner, deposed as follows:

Direct examination by Mr. KINGSLEY:

Q. In what business are you engaged? A. The motion picture exhibiting business.

Q. How long have you been in the motion picture exhibiting business? A. About five years.

- 2 Q. Where is your present place of business? A. They are all in Brooklyn: 3386 Fulton Street, 2587 Atlantic Avenue, and 11A Sumpter Street.

Q. How long have you been in the motion picture business? A. Well, for the last five years.

Q. Have you been an exhibitor all of that time? A. Yes, all of that time.

Q. From what rental exchange do you obtain service at the present time? A. From the General Film Company's Twenty-third Street branch.

Q. Are you licensed by the Motion Picture Patents Company? A. Yes.

- 3 Q. How long have you had a license from the Motion Picture Patents Company? A. I have had it right along all the time that I have been in the business.

Q. And how long, Mr. Forster, have you been taking service from the General Film Company? A. Well, on and off.

Q. Have you taken service from the other exchanges? A. Yes, sir, I have.

Q. At other times? A. Yes, sir, I did.

Q. From what other exchanges have you taken service? A. The Greater New York Film Company, and the Hudson Film Company.

- 4 Q. Have you used the independent service in your theatres at various times? A. They are the independents—the Hudson Film Company, and the Empire, they are the independent concerns.

Q. Do you find it necessary in the management of motion picture theatres to avoid conflicts with your competitors? A. Yes, I absolutely do.

Q. Have you had difficulty in avoiding competing programs with your competitors when you were with the unlicensed exchanges? A. I have.

Q. Did you have any difficulty in avoiding conflicts of that kind when you were taking service from the Greater New York Film Rental Company? A. I did, yes, sir. 1

Q. Did you have difficulty in avoiding conflicts with competing theatres before the organization of the General Film Company? A. I did.

Q. What has been your experience since you have taken service from the General Film Company with respect to conflicting programs? A. Well, I am usually kept away from my competitors, and I am able to give my patrons a clean and better show that way.

Q. Before the organization of the General Film Company did you find it possible to arrange programs and advertise them in advance? A. I did not. 2

Q. Did you ever attempt to do that before the organization of the General Film Company? A. I did, and I was fooled at it.

Q. What do you mean when you say you were "fooled at it?" A. I didn't get what I was promised.

Q. That is to say, the exchange made you certain promises? A. Yes, and I advertised it and then I didn't get it.

Q. And did this happen on more than one occasion? A. On many occasions. 3

Q. Since the organization of the General Film Company, and since you have taken service from it, have you been able to advertise programs in advance? A. Yes, sir.

Q. And to show the programs on the day advertised? A. Yes, sir.

Q. Do you pick out pictures or subjects for your theatre or theatres? A. Yes, sir.

Q. Do you find that the General Film Company assists you in arranging your programs? A. Yes, sir.

Q. Do you ever make requests for special pictures and subjects? A. Yes, sir. 4

Q. And are those requests observed? A. Yes, sir.

Q. Mr. Forster, what would you say as to the prices of motion pictures to the exhibitor now compared with the prices of motion pictures to exhibitors before the organization of the General Film Company? A. The prices are at the present time much lower.

Q. You say they are lower than they used to be? A. Positively, yes, sir.

Q. What would you say as to the service you are now

1 obtaining in comparison with the service you had some years ago? A. It is much better.

Q. What would you say as to the quality and artistic excellence of the pictures you are now obtaining from the licensed producers of motion pictures in comparison with the pictures they furnished you some years ago? A. They are very good at the present.

Q. Are they any better or any worse than they used to be? A. Much better.

2 Q. Do the manufacturers of motion pictures actively compete for the favor of the exhibitors? A. Yes, sir.

Q. And do you receive circulars and advertisements from them? A. Yes, sir.

Q. Are you solicited for your business by the independent exchanges, and their representatives? A. Yes, sir, very often.

Q. Do they come to see you? A. Daily.

Q. Do they say they will give you a better service? A. Yes, sir.

Q. And, also better prices? A. Yes, sir.

3 Q. What do they say as to the quality of their pictures? A. That they are so much better than the Association's films, etc.

Q. What kind of a projecting machine do you use in your theatres? A. Standard American. I have used the Powers, and the Edison machines.

Q. What are the prices to the public in your theatres? A. Five cents, except on Wednesday, Saturday and Sunday we charge them ten cents.

Q. And is that true of all three of your theatres? A. No. Two of them are only charging ten cents on Saturday and Sunday.

4 Q. Mr. Forster, have you had occasion to go about in New York and to observe what the prices are in the various motion picture theatres? A. Yes, sir.

Q. What is the average price in the smaller theatres? A. Well, five cents.

Q. Do you know anything about the prices of admission to motion picture theatres in any other country or countries? A. Yes, sir, I have been away all Summer.

Q. Were you abroad during this past Summer? A. Yes, sir, I did go.

Q. And what countries did you visit?

1

Mr. GROSVENOR: This is objected to, as immaterial.

The Witness: I visited Germany, Austria-Hungary, Roumania, Turkey, Greece, and France. That is all.

Q. When you were abroad did you go to motion picture theatres? A. I did visit them quite often.

Q. What did you observe as to the prices of admission to the various motion picture theatres in the various countries to which you have referred, and in answering will you please specify the countries and cities in which you have had experience in this respect? A. Well, in the cities of Hamburg, Berlin, Dresden, Vienna, Bucharest, Constantinople and Patris, Greece, and Marseilles, I found the prices to be at an average or on an average of twenty-five cents, fifty cents and seventy-five cents; that is, in American money.

2

By Mr. KINGSLEY:

Q. What were the prices in Bucharest? A. In the Roumanian money—I figured it out in American money to be about the same thing.

3

Q. What were the prices in Constantinople? A. The same thing.

Q. About how much? A. I can't remember exactly how they go along there, how they figure it there, but I figured it out in American money and that is what I usually found it to be.

Q. And that was about fifty or seventy-five cents in Constantinople? A. Twenty-five cents and fifty cents, and seventy-five cents. In the balcony they charge seventy-five cents; in the front they charge twenty-five cents and in the rear end of the theatre, fifty cents.

4

Q. How much was the price in Hamburg? A. Twenty-five cents, fifty cents and seventy-five cents.

Q. And in Marseilles? A. The same thing in American money.

Q. Did you find any five or ten-cent houses in Europe? A. No, sir.

1 Q. What did you observe with respect to the pictures themselves, in those foreign theatres? A. Well, I have seen the very same pictures we have here. I have seen the same pictures, such as the Vitagraph, Biograph, Lubin, and I have seen the Great Northern. I have seen all of the very same pictures as we have here.

Q. In the shows that you saw abroad about what was the proportion of American pictures? A. About half.

Q. When the General Film Company was organized did you feel that you had to go with that company? A. I did.

2 Q. By that do you mean you felt you would be compelled to go with them? A. No, sir, I felt that it would be to my advantage to go with them, that I would get better treatment.

Q. Was any pressure exerted upon you or did anybody try to force you to go with the General Film Company? A. No, sir.

Q. And was there any feeling in the trade, so far as you could find out, that you had to go with the General Film Company even if you didn't want to? A. No, sir.

3 Q. Are you acquainted with Mr. Fox, of the Greater New York Film Rental Company? A. Yes, sir.

Q. Did you have any competition with any theatre owned by Mr. Fox and served by the Greater New York Film Rental Company at any time in your business experience? A. Not owned by Mr. Fox, but served by Mr. Fox.

Q. While you were competing with a theatre served by Mr. Fox, did you have any trouble in keeping your programs clear?

Mr GROSVENOR: Objected to on the ground it is immaterial.

4

The Witness: I did.

By Mr. KINGSLEY:

Q. What was your experience at that time? A. I couldn't advertise my show. The minute I advertised, the reel that I advertised my competitor got a day or so ahead of me.

Q. You mean by that you would advertise your show some time in advance? A. Yes, sir, I did. 1

Q. And then, that a day or two before you could show the pictures which you had advertised, your competitor, who was supplied by the Greater New York Film Rental Company, would show these particular pictures you had advertised? A. Yes, sir.

Q. Did that happen to you several times? A. Yes, sir, very often.

Q. Did you finally give up advertising while he was conducting this competition? A. Yes, sir, I couldn't advertise. 3

Q. So you found it impossible to keep a clear program with respect to this competitor, his theatre being one served at that time by Mr. Fox's Greater New York Film Rental Company? A. Yes, sir.

Q. Do you know who owns the Dewey Theatre? A. I know Mr. Fox is a part owner of it.

Q. Did you have any experience with respect to booking certain pictures at your theatre for a certain day, while you were in the Greater New York Film Rental Company, and subsequently finding that you could not get them? A. Yes, sir. 2

Q. What was your experience with respect to that? A. Well, the last experience I had was a special that I booked, and I advertised it for a full week in advance, and when the day came around for me to show it, they simply told me that the special was out of town.

Q. And who told you that? A. The booker.

Q. And at what exchange? A. This was the Greater New York Film Company's exchange.

Q. The Greater New York Film Rental Company's exchange? A. Yes, sir; and I was passing on Fourteenth Street and I seen the very same special in the Dewey Theatre. 4

Q. The same special which had been promised to you? A. Yes, sir.

Q. And which you had advertised? A. Yes, sir.

Q. And which they told you was out of town? A. Yes, sir.

Q. And you saw it in Mr. Fox's Dewey Theatre on the very day you were to exhibit it? A. Yes, sir.

1 Cross examination by Mr. GROSVENOR:

Q. Mr. Forster, are specials an important part of an exhibiting theatre's program? A. Very important.

Q. They are the most important pictures in the motion picture business today, are they not? A. Yes, sir.

Q. And contribute more largely than any other one thing to the success of the theatre? A. Well, not at all. The single reel counts just as much, although we get larger paper for it, a larger advertising.

2 Q. When you show a special feature over in Brooklyn, you have a certain territory within which no one else shows that special feature, is that it? A. Yes, sir, I do.

Q. But, at the same time, a theatre over in New York may be showing the same special feature? A. Yes, sir.

Q. Then, that means that there are at the same time, several copies of the same film in use, but in different territories? A. That may be.

3 Q. That being the case, how do you know that this film that you saw down here on Fourteenth Street, at the Dewey Theatre, was the copy you were going to have in Brooklyn? A. I didn't have a copy. I didn't know this was the copy promised to me by the exchange.

Q. But, what you mean is, that a copy of the film had been promised to you in Brooklyn? A. Yes, sir.

Q. You don't know whether another copy had been promised to the Dewey Theatre, do you? A. No, sir.

Q. And it was only your conjecture, when you testified on your direct examination, that the Dewey Theatre got your copy? A. I didn't say they got my copy. I said they had the feature which I was promised.

4 Q. But you did not mean to assert that the Dewey Theatre had the very film which you were going to have in your theatre? A. No, sir, I couldn't do that.

Q. You didn't mean to give such an impression, did you? A. I did not.

Q. Isn't it true, Mr. Forster, that theatres get films of different age? A. Yes, sir.

Q. For instance, you may get a film on the release date, and another theatre may get the same film when it is ten days old? A. Yes, sir.

Q. Then it is the case, is it not, that you will often

show a film which has been shown by another theatre? A. 1
By another theatre, yes, sir.

Q. And that another theatre will show a film before 2
you show it? A. Yes, sir.

Q. You testified on direct examination, didn't you, that 3
you had advertised a film to be shown on a certain date?
A. Yes, sir.

Q. And before that day came, another theatre would 4
show it? A. Yes, sir.

Q. Well, is there anything unusual in that? A. Well, 5
I can't answer you on that. I have been with the Greater
New York Film Rental Company, and I have had com-
petitors who were with the General Film Company. Now,
when I have seen a film advertised by the General Film
Company, that is in a house that was supplied by the Gen-
eral Film Company, I went to the Greater New York Film
Rental Company, and I have told them, "Why, I am booked
for this, and my competitor is showing this three days
ahead of me," and—

Q. Did you have that picture which you complain of as 6
being shown by your competitor in this unfair way, as you
assert, to your disadvantage; had you secured it for the re-
lease date, or had you secured it for certain days after the
release date? A. For certain days after the release date.

Q. Do you know that your competitor had not paid for 7
it more than you had paid, in order to get it at an earlier
date? A. Do I know that?

Q. Yes. A. I don't.

Q. If he paid for it on its release date— A. We never 8
asked that—

Q. Was he not entitled to get it on that date? A. 9
He was entitled to it if he paid for it, but we were
not renting any first-run stuff.

Q. Now, is there anything you want to add to your an- 10
swer? A. Well, I don't recollect now.

Redirect examination by Mr. KINGSLEY:

Q. Did counsel succeed in interrupting your answer to 11
the question so you could not answer it? A. Yes, sir, he did.

Q. Now, Mr. Forster, you never found any fault with the 12
fact that a picture may be shown at some other theatre one

1 or two days in advance of its coming to your theatre? A. Certainly not.

Q. No one ever found any fault because a picture was shown in your theatre, and then came to his theatre a week or two afterwards? A. No, sir.

2 Q. What you are complaining of is the immediate effect in your neighborhood after you had advertised a definite and selected program, that another theatre was apparently deliberately furnished by the rental exchange with your program about two days before you could show your program, thus enabling your competitor to take advantage of the expenditure you had made in advertising these pictures? A. Yes, sir.

Q. And that was the kind of conflicting program that you were testifying in regard to? A. Yes, sir. I will add this much, that while being with the Greater New York Film Rental Company, I will say we had a fifteen-day service there, and when my competitor showed a reel or advertised a reel which I was entitled to, the Greater New York gave me that reel after it was only ten days old, just to show it ahead of him.

3 Recross examination by Mr. GROSVENOR:

Q. Do you feel you have answered fully the questions I have asked you, Mr. Forster? A. I don't know.

Q. Because, if you have not, you may add anything that you may care to, to your previous answers. A. I have nothing else to add.

The Museum of Modern Art



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